Public Utilities

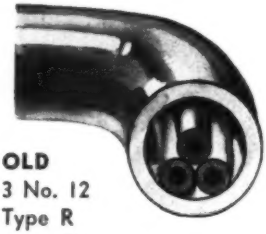
FORTNIGHTLY

April 11, 1946

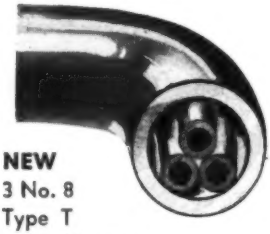
PUBLIC UTILITIES REPORTS, INC.
PUBLISHERS

CRESCENT SYNTHOL (Type T)

Allows Larger Capacity
On New Installations
and
Permits **DOUBLE THE AMOUNT OF COPPER**
in
Existing Raceways



OLD
3 No. 12
Type R
carry 20 amps.



NEW
3 No. 8
Type T
carry 41 amps.

Under present conditions there is urgent need for an economical and quick way of adding to the current carrying capacity of branch circuit conduits already installed. Increasing numbers of electrical appliances, air conditioning units and other equipment call for greater load on these branch circuits.

A simple solution to this problem is to replace present wiring with CRESCENT SYNTHOL Type T (formerly Type SN), which offers an easy and low-cost way approximately to double the current carrying capacity of the existing raceway.

An even greater increase in carrying capacity can be secured by wiring with CRESCENT Type TW in place of lead covered cable in wet locations.

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Public Utilities Fortnightly

VOLUME XXXVII *April 11, 1946* NUMBER 8

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Pages with the Editors

STRAINING the gnat and swallowing the camel seems to be quite the fashion these days in discussions about prices, high cost of living, and so forth. We refer to the ironic situation wherein Congress and public officials devote so much of their time, energy, and emotion to the subject of making the price of utility service ever cheaper and more abundant, while at the same time some of these same gentlemen urge higher prices for clothing and food, which exact such a vastly greater share of the consumer's dollar that a comparison is ridiculous.

STABILIZATION Director Chester Bowles ought to be a pretty good authority—in view of his background as OPA Administrator—on whether the utility rates have "held the line" as compared with other commodities. In a nation-wide radio address over the ABC network on March 2nd, Mr. Bowles said "electricity and gas prices are about the same as they were three years ago." He added: "We are doing all right on our fuel and electricity; clothing is not so good, but it is getting better."

JOHN DIERDORFF

SINCE gas and electricity count for less than a nickel out of the average residential consumer's dollar for monthly living expenditures, and since clothing and food absorb much more than half of it, one is tempted to wonder just what type of Alice-in-Wonderland reasoning justifies all the emphasis which Washington places on driving utility rates down further, while at the same time permitting other commodity prices to go up, often with the loud benedictions of blocs in Congress and others.

EVIDENTLY utility prices have become so cheap and insignificant—in proportion to the benefits received—that there is a feeling that they should become free like the other "best things of life," listed in the popular song of a decade ago, which included the moon and the stars, the sunlight, the springtime, beautiful landscapes, ocean waters, and so forth.

BUT even nature's bounty, free for all in the raw state, cannot always be absolutely free at the point of delivery for retail consumption. A clerical friend of our acquaintance used to give an amusing example, along this line, about a colored minister of the gospel who was confronted by an indignant matron of his congregation. It seems the lady resented the idea of so many collections being taken up at the services. In fact, she resented the idea of any collections at all. She said, angrily: "Ain't yo' don' tol' us 'bout er million times, parson, dat de grace ob God am free alike fo' all folks

to partake in de sweet family an' bosom ob de church? Den why fo' does yo' dingdong de life out'en us ebery Sunday, snatching ebery loose nickel an' dime we po' people got to our names?"

THE harried parson considered this argument for a minute and then responded with a very apt allegory: "True, sister, true! De grace ob God is free and welcome fo' all mankind—jes' like de pure water which runs in de riber. Now, if'n yo' all takes a bucket an' goes down to de riber, yo' all can have all dat water yo' want free fo' nothin'. But when de water company pipes hit into yo' kitchen dere's a charge, sister, dere's a charge! So hit is, likewise, wit' de grace ob God. Hit's free ef'n yo' all goes out an' gets it fo' yo'self. But when we *pipes* it to yo', sister, when we *pipes* it to yo'—dere's a charge."

* * * *

SOMETIMES it almost seems as if the greater the proportion of benefit derived from a service or commodity, the less mankind—by a perversity in his appraisal of values—appears willing to pay for it. We could not live without these free gifts of nature—the sun, pure water, and so forth. The fact that electric energy, giving us the equivalent of the labor of thousands of slaves in our own home, and gas fuel, which is another form of conserved energy derived from the sun, may cost us a few cents a month receives far more attention than the price of liquor, which has increased over 100 per cent within the last few years, or other skyrocketing expenses for nonessentials.

THE same man who will cheerfully lose a week's wages in a single hour at the race track, under the impression that he is a "good sport," may howl the loudest that he is being oppressed by a monopoly if his monthly utility bill shows an increase amounting to less than the price of a good cigar. We have often wondered just how much difference it would make in electric consumption, for example, if it actually were *free* to the domestic consumer. Would the residential load soar to fantastic proportions, requiring utilities to install vastly increased capacity?

A RATHER surprising answer to such speculation is contained in the opening article in this issue. The fact seems to be that price alone, per kilowatt hour, or even the *absence* of price per kilowatt hour of electricity is not the absolutely controlling factor on the residential consumption.

THIS article, which purports to show the mathematical relationship between rate trends and residential consumption in the electric power field, indicates that, for a certain system studied in the California area, the complete absence of a charge for residential electricity would, under present circumstances, increase consumption to nearly 3,600 kilowatt hours a year per customer.

G. C. DELVAILLE, author of this unusual analysis of the mathematical relationship between rate charges and consumption, is an executive assistant of the California Electric Power Company.

* * * *

JOHN DIERDORFF, whose article on the swing of the public power pendulum in the Pacific Northwest begins on page 483, is another new contributor to these pages. Born in Oregon in 1899, and educated at the University of Oregon (AB, '22), DIERDORFF started out as a newspaper reporter with the old *Portland Telegram*. He next spent ten years as a traveling representative for a New York charitable fund-raising organization. He joined his present organization, Pacific Power & Light Company, in 1933, where he is now advertising supervisor.

* * * *

ROBERT M. HYATT, whose article on drilling oil in submarine locations begins on page 477, is a professional writer on industrial subjects, now resident in Santa Barbara, California.

THE next number of this magazine will be out April 25th.

The Editors

In This Issue

In Feature Articles

In Financial News

In What Others Think

In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 129-192, from 62 PUR(NS)

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

ALBERT J. BROWNING
Director, Office of Domestic Commerce, Department of Commerce.

"The American citizen has a healthy faculty for always wanting more and better things than he has."

BERNARD M. BARUCH
Financier.

"The Constitution has made America what it is—it was our salvation in the past and it is our hope of the future."

LELAND OLDS
Chairman, Federal Power Commission.

"The country's business is no longer seeking a just return for serving the consumer needs of the people, but is seeking maximum profits through exploitation of those needs."

HENRY FORD, II
President, Ford Motor Company.

"The reconversion battle is not going to be won by speeches—mine or anyone else's. It is not going to be achieved by recriminations, newspaper battles, memoranda, or essays, but by hard work."

LEO WOLMAN
Professor, Columbia University.

"Since 1933, we have gone so far in conferring rights and privileges upon organized labor that it is today hard to think of any responsibilities and restraints to which labor unions are subject."

EDITORIAL STATEMENT
The New York Times.

"The right road for the administration is clear. It should not try to frame any 'wage-price policy'; it should put the government's finances in order, and move toward the restoration of a free competitive economy."

HARLEY J. LUTZ
Professor, Princeton University.

"A realistic consideration of revenue that can be secured at tax rates which, for ordinary peace conditions must be regarded as ceiling rates, will demonstrate that further drastic reductions of Federal spending below the proposed 1947 budget total must be made."

FRED WOLF
Director, Pacific Northwest Development Association.

"We have read in national magazines glowing accounts of TVA by writers whom we suspect of never having been west of the Mississippi. Any area of the size of the Tennessee valley in which the government would spend $900,000,000 would certainly have some reason to feel satisfied, though it might be said it has sold out its birthright for a mess of pottage."

ROBERT A. TAFT
U. S. Senator from Ohio.

"There is no use for the President to inveigh against inflation when we already have inflation through government action and are bound to have more if we continue in our present course."

CHARLES SEYMOUR
President, Yale University.

"If this nation is to be delivered from the wrath to come the American people must themselves provide the faith, the courage, and the intelligence necessary to setting the world in some sort of order."

EMIL SCHRAM
President, New York Stock Exchange.

"Many people are putting their money into securities because present policies, or lack of policies, are tending to undermine their confidence in the future value of the dollar. Only the government can preserve the people's confidence in the integrity of our currency."

RICHARD W. LAWRENCE
Former president, New York State Chamber of Commerce.

"Unless reason is restored in the leadership of the labor movement, under the laws of the nation and in our everyday dealing with the men and women in the employ of industry, we are powerless, as the management or ownership group, to deal with the situation on an equal basis."

JOHN W. MAUCHLY
Professor, Moore School of Engineering, University of Pennsylvania.

"In high-speed computing and more widespread use of numerical mathematics for industrial design lie possibilities which affect us all—better transportation, better clothing, better food processing, better television, radio, and other communications, better housing, and better weather forecasting."

Excerpt from report of Committee on Postwar Tax Policy.

"Deficit spending is not only a habit-forming fiscal narcotic, but, so long as human nature remains what it is, and so long as such spending can be used to provide patronage and obtain votes, it must be regarded as a dangerous threat to the corruption of the electorate and to the democratic system of government."

Excerpt from "New England Letter," published by First National Bank of Boston.

"We have no alternative if we are to maintain solvency and integrity as a nation, but to return to the fundamental principles of thrift, hard work, pay-as-you-go, incentives for business, wages based on productivity, and increased production with lower prices, which are among the foundation stones of what is called the American system."

WILLIAM WHITE
President, Delaware, Lackawanna & Western Railroad.

"... to keep our railroads functioning under the system of free enterprise, the problem is reasonable profit that will permit sound investment in facilities and equipment, which will tend always to decrease costs and improve service, to pay a fair wage to employees, to pay a reasonable dividend to stockholders, and permit reduction of debt."

MORE PUBLIC UTILITIES

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r WAS no "wartime secret" that owners of Dodge *Job-Rated* trucks experienced consistent "on-the-b" operation. Because their trucks *fit the job*, they rformed more efficiently, operated more economi-lly, lasted longer.

hat's why today so many more public utility com-nies are planning to standardize on precision-ilt Dodge *Job-Rated* trucks.

ey're buying trucks with engines rated for their ds. They're getting trucks with a transmission d clutch, with axles, springs and every other unit *b-Rated* to handle the job . . . to do a better job, nger, and at low cost!

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LISTEN TO THE MUSIC OF ANDRE KOSTELANETZ, WITH FAMOUS GUEST STARS
THURSDAYS, C. B. S., 9 P. M., E. T.

4

WARTIME YEARS PROVED PLENTY

Two "eye-opening" facts that will long be remembered by men to whom trucks were a "bread and butter" proposition during wartime, are these:

1 There's no substitute for years of truck-building experience, or for precise workmanship and quality . . . major reasons for the economy, dependability and long life of Dodge Job-Rated trucks.

2 Dodge Job-Rated trucks stayed on the job because of the ready availability of Dodge TRUCK PARTS and because of the prompt, efficient truck service of Dodge dealers.

See your Dodge dealer Now! Let him help you choose the right Dodge Job-Rated truck for all your hauling needs!

DODGE *Job-Rated* TRUCKS

FIT THE JOB . . . LAST LONGER

Utilities Almanack

APRIL

11	T[h]	¶ *Iowa Independent Telephone Association starts annual convention, Des Moines, Iowa, 1946.*
12	F	¶ *Missouri Valley Electric Association ends engineering conference, Kansas City, Mo., 1946.*
13	S[a]	¶ *American Water Works Association ends meeting, Butte, Mont., 1946.*
14	S	¶ *International Lighting Exposition will be held, Chicago, Ill., Apr. 26–30, 1946.*
15	M	¶ *U. S. Chamber of Commerce will hold annual meeting, Atlantic City, N. J., Apr. 30–May 2, 1946.*
16	T[u]	¶ *United States Independent Telephone Association, National Executive Conference, begins, Chicago, Ill., 1946.*
17	W	¶ *Indiana Telephone Association will hold convention, Indianapolis, Ind., May 1, 2, 1946.*
18	T[h]	¶ *American Gas Association, Spring Executive Conference, will be held, Cincinnati, Ohio, May 6, 1946.*
19	F	¶ *Pennsylvania Gas Association will hold annual meeting, Wernersville, Pa., May 7–9, 1946.*
20	S[a]	¶ *Illinois Telephone Association will hold convention, Peoria, Ill., May 8, 9, 1946.*
21	S	¶ *American Public Power Association will hold annual meeting, Memphis, Tenn., May 9–11, 1946.*
22	M	¶ *Indiana Gas Association will hold annual convention, French Lick, Ind., May 9, 10, 1946.*
23	T[u]	¶ *Ohio Telephone Association begins convention, Columbus, Ohio, 1946.*
24	W	¶ *Southeastern Electric Exchange starts annual conference, Edgewater Park, Miss., 1946.*

Authenticated News

Transmission Wires: The Nerve Centers of Electricity

Pictured above is a workman installing equipment in the left switch yard on the hilltop above the west abutment of the Grand Coulee dam.

Public Utilities
FORTNIGHTLY

VOL. XXXVII, No. 8 APRIL 11, 1946

Can Rate Change Results Be Precisely Predicted?

How much electricity would a domestic consumer use if it were given away free? Is it possible to anticipate the results of a given electric rate adjustment on the basis of a mathematical relationship between cost per unit of service and total sales per customer? These and other important questions affecting the formulation of sound postwar rate policies for electric utilities are discussed in this article, based upon the suggested recognition of an interesting formula for determining the effect of domestic rate changes on sales and revenue per customer.

BY G. C. DELVAILLE

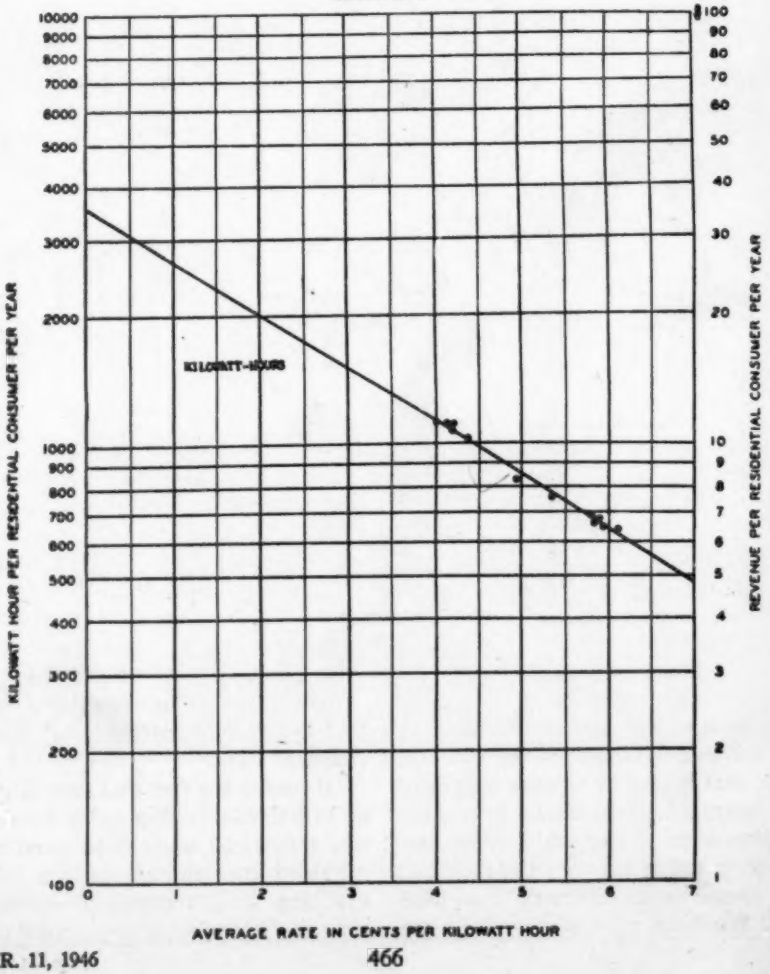
IT is not often possible to express the result of a given human activity in an exact mathematical formula. Yet, that is exactly what is suggested by recent studies made of interesting mathematical relationship which apparently exists between the unit cost of electricity to domestic customers and resulting sales and revenue per customer—with due regard for local factors affecting particular utility operations.

Of course, the fact that some degree of causal relationship exists between rate reductions on the one hand and increased consumption on the other has long been recognized—virtually since the beginning of commercial util-

ity operations. Indeed, the discussion among rate experts as to whether lower unit rates were more the result than the cause of larger per customer consumption (or vice versa) has at times approached the vigor of that classic controversy as to which came first—the egg or the hen.

But we are not concerned here with relative cause or effect of this relationship—but with the somewhat more practical problem of reducing it to a formula which may possibly be used as a gauge if not a guide in the formulation of postwar sales program, for testing the soundness of rate structures, and providing a valuable instrument for rate engineering practice.

GRAPH I



A word by way of background. This suggested formula was arrived at while trying to find some handy method of predicting the increase in kilowatt-hour sales which a given reduction of domestic rate schedules would produce. In plotting the kilowatt-hour sales per customer against the average rate at which these kilowatt hours were sold, it was noticed the various points on the plotting chart fell into a fairly well-defined curve. The very shape of this curve made us suspect that a logarithmic function was involved.

Therefore, these same points were plotted on semilogarithmic paper, using the arithmetical scale for the average rate and the logarithmic scale for annual kilowatt-hour sales per customer, as well as for annual revenue per residential customer. Immediately the points plotted, covering domestic sales for the years 1930 to 1941, inclusive, aligned themselves in the straight line shown in Graph I, page 466.

For those readers who may well have forgotten or may be rusty on the logarithm, a brief definition may, at this point, refresh the recollection enough for them to grasp the general import of this analysis: A logarithm is simply the exponent of the power to which a fixed number, called the base, must be raised in order to produce a given number.[1]

If any two of these three entities are known—the base, the logarithm, or the result—the third or missing item can be obtained mathematically. For purposes of the computation we wish to examine here, two quantities are presently known from any given utility's operating records: (1) the average cost per kilowatt hour of electricity to its domestic customers; (2) the average annual sales of kilowatt hours per domestic customer. The third item is the constant, which must vary for each utility or group of utilities so as to reflect local geographical or economic factors affecting the particular utility operations. This determines the slope, or "pitch," of the straight line and its location on the graph. We shall learn a little more about these local factors somewhat later. For the present let us proceed to phrase our basic formula, logarithmically. Let us assume:

Y equals annual kilowatt-hour sales per customer

X equals average rate per kilowatt hour

Then $Y = K^x$

where K is the constant which varies for each utility or group of utilities.

So much for the base formula. We have already seen what happened in Graph I when we plotted our different quantities on semilogarithmic paper. We then made similar graphs for many other utilities, some of which are illustrated herein, and in practically every case the straight-line relationship, already mentioned, was confirmed. This relation also holds true for the United States as a whole.

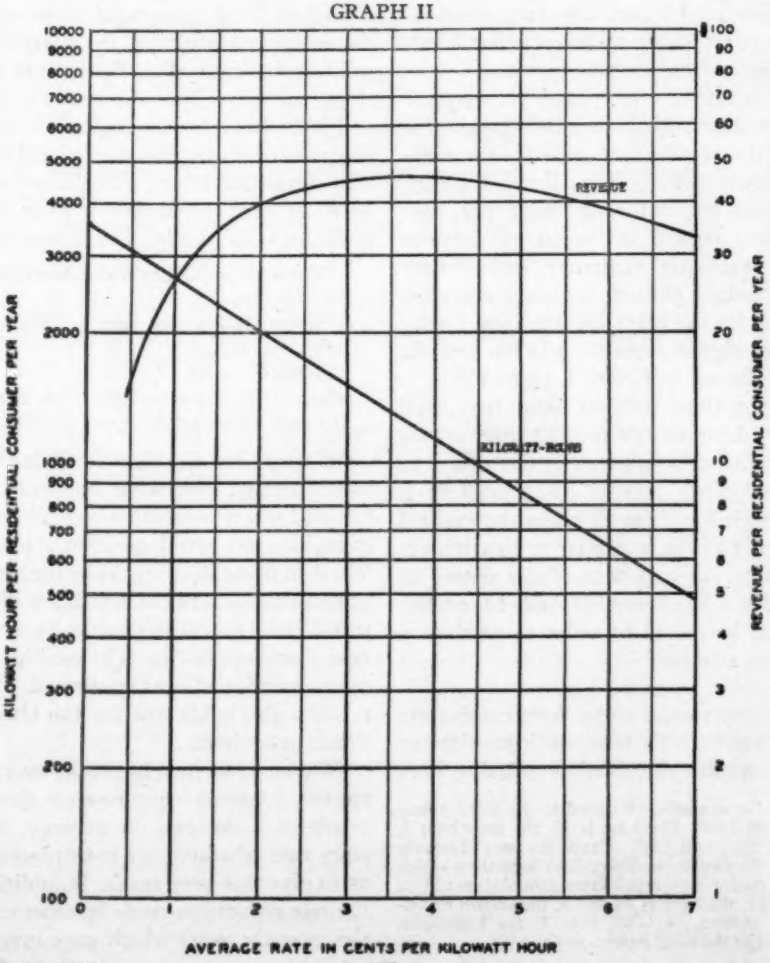
Of course, an increase in the average annual domestic consumption should result in a decrease in average rate, since rate schedules are constructed so as to give this very result. In addition, the rate reductions made by most utilities over the years which were investi-

[1] For example, 10 raised to the third power equals 1,000. The base is 10, the logarithm 3, and the result 1,000. Hence the usual formula for the simple (or Briggsian) logarithm which the reader may recall from school days: $b^l = n$. If *b*, the base, is 10, and *n*, the known resulting number, is 1,000, then *l*, the logarithm, must be the third power.

gated were instrumental not only in increasing consumption but also in lowering average rates. It is also natural that this increase could be expressed as a logarithmic function since the increase in consumption of electric energy in a home is directly related to human activities; in other words, it is akin to a biological growth. Such growths can usually be expressed in terms of logarithmic functions.

Basically, two essential factors determine the slope of this straight line and its location on the graph. They are (1) the rate schedule and (2) the price of electrical appliances. Directly related to these two basic factors are such items as:

GRAPH II



a. The economic level of the area involved; that is, the customer's purchasing power.

b. Factors which determine rate levels, such as the rate levels in the territory surrounding a given utility, the cost of generating power and bringing it to load center, climatic conditions, and, what is most important, the costs of competitive methods of cooking and water heating.

c. The merchandising policies of the utility and the aggressiveness of its appliance salesmen.

WHILE the effect of these items on rate levels and consumption is fairly obvious, those related to climate and to competitive fuels need further explanation. In a climate having long periods of high temperature, such as in parts of the Southwest, customers will be willing to pay rates higher than in other sections of the country for the comfort of electric cooking and air conditioning. On the other hand, where natural gas is available for cooking and water heating, not to mention air heating, electric rates have to be brought down to very low levels to compete with this cheap fuel.

So far, this discussion has been confined to the relation between kilowatt-hour sales per domestic customer per year and the average rate at which these were sold. There also exists a relation between the average annual revenue per domestic customer and the average rate. If we let Z equal this average annual revenue, then our original formula gives us

$$Z = XY = XK^x$$

The curve which this formula represents can easily be obtained from Graph I. For instance, at 4 cents per kilowatt hour, this graph gives an average annual sale figure of 1,135 kilowatt hours per customer. Multiplying these kilowatt hours by 4 cents per kilowatt hour gives an average annual revenue of $45.40 per customer at that average rate. Other points can be obtained to give the curve shown in Graph II. (See page 468.)

THE startling feature about this revenue curve is that it has a maximum at a definite average rate. If we try to increase average kilowatt-hour consumption beyond that obtained at this point of maximum revenue, the decrease in average rate will offset the increase in kilowatt-hour consumption, and the average annual revenue per customer will decrease. The graphs shown for other utilities confirm this peculiarity. This is also borne out by our own experience. The table as outlined on page 470 shows the basic data from which Graphs I and II were constructed. It will be noted that while kilowatt-hour use per customer per year increased 18 per cent from 1938 through period ended March 31, 1945, the revenue per customer per year only increased .8 per cent during the same period.

THIS effect cannot be ascribed to the decreasing rates composing a rate schedule. Certainly, if our customers use 1,300 kilowatt hours per year and pay us $45 for these, any increase in kilowatt-hour use will increase the revenue per customer, no matter how low the rate at which such kilowatt hours are sold. The cause for this decreasing revenue with increasing kilowatt-hour sales must be ascribed to rate reductions as they relate to customer purchasing power. This is

	Average Rate	*Kilowatt-hour Customer*	*Revenue Customer*
1930	6.10	639	$38.98
1931	5.88	678	39.89
1932	5.78	687	39.73
1933	5.95	645	38.39
1934	5.83	654	38.12
1935	5.33	739	39.37
1936	4.93	829	40.85
1937	4.35	1,011	43.99
1938	4.18	1,067	44.64
1939	4.18	1,085	45.34
1940	4.11	1,103	45.29
1941	4.00	1,103	44.11
1942	3.95	1,126	44.45
1943	3.81	1,258	47.99
1944	3.54	1,293	45.71

best explained by the following example:

It must be remembered that, in the long run, the customer cannot spend more than his income. This income will then have to be budgeted, either consciously or through the unconscious operation of the trial-and-error method. Of this budget, only a limited amount is available for lighting, refrigeration, cooking, water heating, and air heating, the amount so available being dependent on the income group in which the customer belongs. If electric rates do not permit carrying on these functions and keeping within the budget allotment, the customer will use other and cheaper methods of performing such functions.

In the United States, income is distributed among wage or salary earners as outlined below.

LET us suppose that we decide to sell electric ranges to a group of customers whose income is distributed in accordance with the table below. To sell ranges to the families having annual incomes in excess of $4,000 (groups A and B) will be fairly easy and require only slight reductions; as the budgets of these families are elas-

Group	*Net Income, Families of Two or More*	*Per Cent Distribution Of Total No. of Families*	*Accumulated Percentage*
A	$5,000 & over	6	6
B	$4,000 to $4,999	2	8
C	$3,000 to $3,999	10	18
D	$2,000 to $2,999	22	40
E	$1,500 to $1,999	15	55
F	$1,000 to $1,499	16	71
G	$ 500 to $ 999	16	87
H	Under $500	13	100

(From U. S. Department of Labor Bulletin No. 723. Split between groups B and C estimated by means of U. S. Department of Commerce Census Bulletin P-14 No. 2.)

tic enough to stand an increase in cooking costs. To sell ranges to Group C, representing 10 per cent of the total number of families, may require some rate adjustment, their budgets not being as elastic as those of the preceding groups. Since the preceding groups represent only 8 per cent of the total, such a reduction is bound to result in an increase in revenue. To sell ranges to the next group, D, becomes more difficult. It may be necessary to make a sizable reduction in order to fit electric cooking costs within that class' budget. But, obviously, an increase in gross revenue brought about by 22 per cent of the customers adopting electric ranges will more than offset the reduction granted the 18 per cent representing the higher income brackets. The same reasoning may be applied to the sale of electric ranges to Group E and possibly to Group F. However, its application to Group G is doubtful. Here we have 16 per cent of our customers with such a low income that drastic reductions will have to be made in the cost of electric cooking in order to enable them to operate ranges. Such a reduction will also apply to the 71 per cent of the total customers who already have ranges.

It is most unlikely that the increase in sales brought about when 16 per cent of the customers adopt electric cookery at reduced rates will offset the reductions given to 71 per cent of the customers. Thus, the revenue, and hence the revenue per customer, will decrease.

A similar but larger decrease in revenue per customer will be effected if we try to sell electric ranges to the lowest income group, representing 13 per cent of the customers.

Of course, this illustration is crude and overly simplified. For one thing, it does not bring out the fact that sometimes electric ranges are sold to people who can't afford to operate them, following which reductions have to be made to keep the ranges on the lines. However, it will give an idea of the mechanism by which increases in per customer kilowatt-hour sales may result in a decrease in per customer revenue. Incidentally, these graphs show that there is a definite limit to the kilowatt hours that can be sold to domestic customers, which limit is obtained by an extension of the straight line representing kilowatt-hour sales on Graphs I and II with the "zero cents per kilowatt-hour" axis, giving a maximum sale of 3,532 kilowatt hours per customer per year if current is given away. Of course, the accuracy of such an extension is very problematical, but it is a fact that there are limits to the kilowatt hours which a domestic customer can use, even if these cost nothing, one of these being the financial ability of the customer to buy the appliances needed to use the kilowatt hours.

It would then appear that if our kilowatt-hour sales per domestic customer per year continue to increase, the revenue per customer per year will eventually decrease. But will the present straight-line relation (when plotted on semilogarithmic graphs) between the kilowatt-hour sales and the average rate continue? Past experience would so indicate. This relation held true during the last depression.

It also held true during the readjustment period which followed it, as well as during the period immediately

preceding our entry in the war. During the period illustrated by Graphs I and II—namely 1930 to 1941, inclusive—there were many rate reductions; a decrease followed by an increase, in the price of appliances, and various long-term appliance sales policies were put in effect, all without affecting this straight-line relationship. Only the war seems to have caused a deviation in this straight-line relationship. All the graphs illustrated were correlated on data covering prewar years; that is, prior to 1942. It will be seen that, since 1941, utilities having a great deal of war activity within their territory have shown an increase in kilowatt-hour use per customer per year in excess of that shown by a projection of the straight line determined by the record established prior to 1942. This may be due to a shortage of housing facilities with consequent renting of rooms which would ordinarily be idle. In some cases this may be due to doubling up of families in one residence. Also industrial shifts around the clock have caused lighting use in residences at other than normal times. Furthermore, there are reasons to suspect that some utilities included in their data as single customers master metered emergency housing projects, thus artificially increasing the per customer kilowatt-hour consumption.

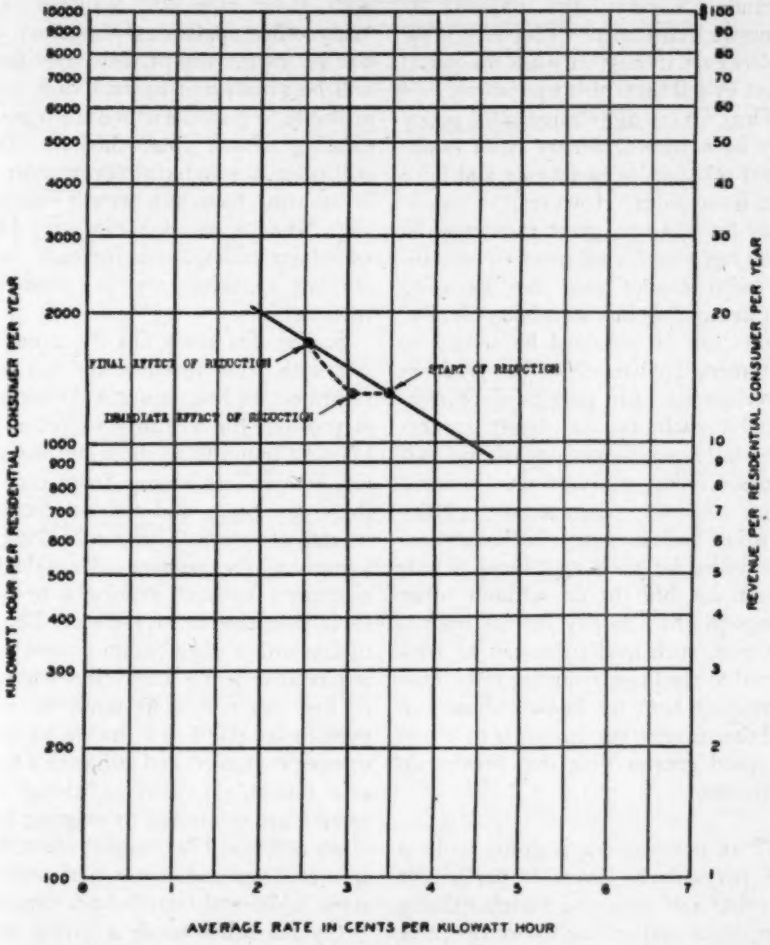
It may well be that in this postwar period consumption may decrease in such a way as to resume following the straight-line trend established prior to the war. An indication that such may be the case is given by our own domestic service sales for the years 1942, 1943, 1944, and the twelve months' period ended August 31, 1945. Translated in terms of the relation between kilowatt-hour sale per domestic customer per year and average rate at which such sales were made, the results for these years are shown in Graph III, page 473.

For the year 1943, this graph shows the characteristic increase in excess of the prewar trend shown by other utilities affected by war activities. This increase was then offset by a rate reduction, and, in spite of the war boom in effect throughout the territory, the growth from then on followed the established prewar trend.

It would then appear that utilities cannot increase their per customer domestic kilowatt-hour sales without eventually decreasing their revenue per domestic customer unless something new and very different from what has happened in the past takes place in the future. A clue to what such a "something new" might be was indicated by what happened in Imperial valley some years ago. In that territory, from 1926 to 1936, inclusive, the kilowatt-hour sale per domestic customer increased steadily from 628 kilowatt hours per customer in 1926 to 1,598 kilowatt hours per customer in 1936. However, the annual revenue per domestic customer reached a peak of $69.86 in 1932 and then decreased to $60.68 in 1936. This decreasing trend ended in 1936, and thereafter the kilowatt hour climbed to a peak of 2,368 kilowatt hours per customer per year and the revenue to a peak of $69.34 per customer per year.

Two major factors contributed toward reversing this trend of decreasing revenue in spite of increasing kilowatt-hour sales. They were, first, a

GRAPH III



merchandising campaign much more intensive than any previous one, during which merchandise was sold on extremely small down payments, with instalments spread over a 5-year period. Second, an entirely new appliance appeared in that territory. It was the desert cooler. This is an inexpensive house cooler consisting of a one-sixth to one-fourth horsepower motor blowing large quantities of air through the house after passing it through an excelsior pad constantly moistened with water. These coolers are especially ef-

fective in dry desert climates where they operate continuously through the summer. A very large majority of domestic customers adopted these coolers even though we made no special effort to sell them this equipment.

Thus a very aggressive sales policy may be a way to depart from established relations between rate and kilowatt-hour sales. However, as previously pointed out, great care must be taken not to sell appliances to customers who cannot pay the operating cost at existing rate schedules. Similar results can be obtained by selling to customers appliances which perform functions that can only be done electrically, such as the desert coolers previously mentioned, washing machines, radios, and air conditioners. These do not compete with other forms of fuel or energy. If the customer's desire for such appliances is sufficient for him to do without other things in order to pay for the operating cost, such appliances can be connected to the lines, reducing rates, thus increasing *both* the kilowatt-hour use and the revenue per customer at a rate of speed greater than that previously established.

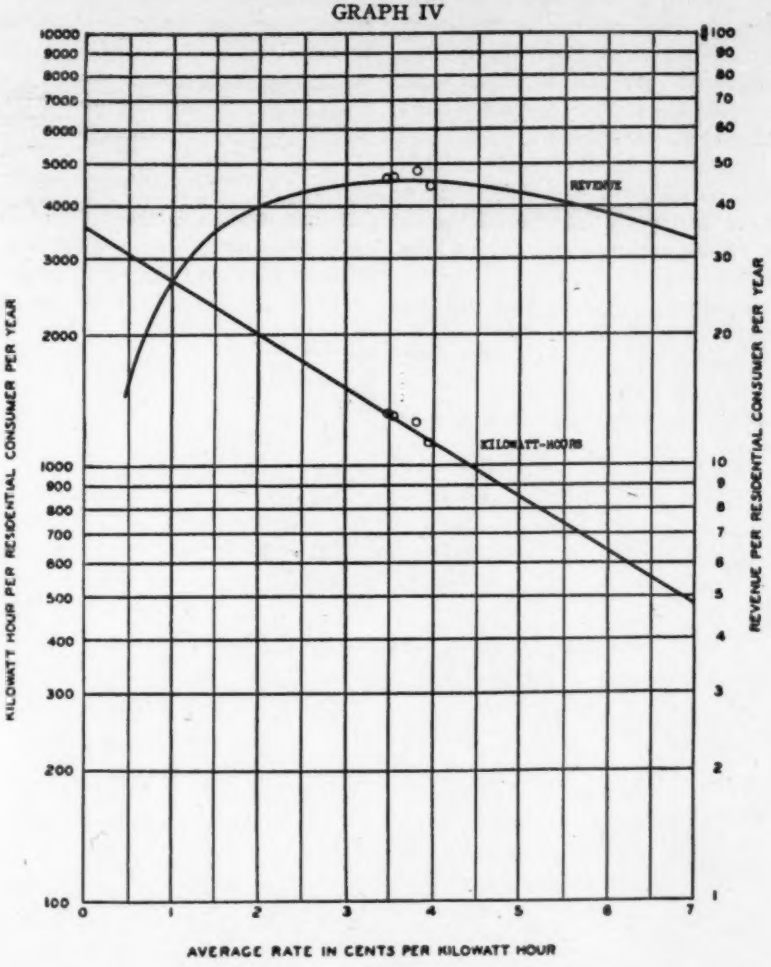
THE postwar era is going to be a particularly favorable period for carrying out intensive merchandising campaigns and selling noncompetitive appliances having high customer appeal. Owing to advertising, magazine and newspaper articles, the public is extremely electrically minded and hence will easily respond to such a merchandising campaign. Also, all kinds of new "noncompetitive" appliances are about to be placed on the postwar market. Among them will be deep-freeze units, air conditioners, laundry driers, television sets, precipitrons with their attendant blowers, and many other appliances. Customer desire for ownership of these appliances will be great; and hence it will most probably be possible to sell them under existing electric rate schedules. This will offer a wonderful opportunity to break away from any prewar relationship between average rate and kilowatt-hour sales, and increase sales without reducing the per customer revenue.

So far this study has concerned itself with gross revenue, and not with return on the investment. Of course, it is possible for a utility to sell more kilowatt hours to its domestic customers, receive less money from each of these customers, and still not decrease its rate of return. This can be done by increasing the number of residential customers without making a proportional increase in investment. Thus a utility with a distribution system having relatively few customers per mile of line can reduce its domestic rates even to the point of reducing its revenue per customer, and still earn a 6 per cent return, provided additional customers are connected to existing lines at no additional investment other than service drop and meter and possibly some additional transformer capacity.

On the other hand, a utility serving a slow-growing, highly concentrated urban center is not so favorably situated, and repeated rate reductions made in an attempt to increase domestic consumption may result in a decrease in per customer domestic revenue with a corresponding decrease in return for that class of service.

Thus it is time for utility manage-

GRAPH IV



ment to appraise carefully its domestic sales, the past trend of these sales, and their probable future expansion. The method outlined provides a good tool for such an analysis. It enables the rate engineer to determine the increase in kilowatt-hour sales and revenue which a given rate reduction will produce. This can be done by determining the immediate drop in average rate produced by the reduction, without increase in kilowatt-hour sales. A fairly simple analysis will give the average rate at which additional kilowatt hours will be sold. The point of intersection of the projected straight-line

trend, as shown in Graph I, with the curve of *increase* in per kilowatt-hour per customer sale will give the increase in kilowatt-hour sale to be expected from the rate reduction. This process is illustrated in Graph IV, page 475.

This same method will indicate whether such a reduction will decrease the per customer revenue as a by-product of increasing the kilowatt-hour sales.

The next step is to have the engineering department determine the investment required to serve the loads to be added by means of such a rate reduction. With this data and an estimate of the new customers to be added to the system, it is an easy matter to determine the final effect of a reduction in domestic rates on net earning. Thus, through this type of analysis a utility can come to a conclusion as to the best merchandising and rate reduction policy to adopt in the postwar era.

Red-hot Hot Dogs Hot off the Radio Waves

A NEW *General Electric-built canteen, equipped to serve hot dogs, hamburgers, and grilled cheese sandwiches—all heated by high-frequency radio waves—is expected off the production line soon.*

The machine looks something like the usual soft-drink or cigaret machine, but is slightly larger. It plugs into the regular 100-volt outlet and works like this:

A customer walks up to the machine, drops in a dime, and pushes a selection button. This trips a tray, and down into an electronic oscillator coil, visible to the customer, falls a wrapped sandwich.

As it falls into place, high-frequency radio waves are brought into play, heat the item to proper temperature, whereupon it falls into a glass door compartment, ready for the customer to unwrap and eat.

Frankfurters and hamburgers for this electronic canteen are to be cooked previously in a special sanitary kitchen, where the mustard will also be applied to the hot dogs.

Oil from Davy Jones' Locker

A new age of discovery begins, indicating, in the opinion of the author, that there will be plenty of petroleum.

By ROBERT M. HYATT

PROPHETS of national impoverishment have been predicting that America's oil reserve is good for only about fourteen years at most; that afterward we'll be out of lubricating oil, kerosene, and gasoline. Which means that we must quit driving.

Do you believe that?

Don't. It is utter nonsense. This article, backed up by several eminent authorities in the oil business, whom we shall quote, tends to prove that we have enough oil—as yet untapped—for the next thousand years!

This is not the only gasoline potential. We have an additional 2,000 years of gasoline in our coal. And, in addition to coal, we have uncountable billions of feet of natural gas which can be converted into gasoline.

There are oceans of oil beneath the land and sea yet to be explored. Perhaps the largest potential oil source is under the shore waters of the Gulf of Mexico, where already successful drilling has been done. A huge sand bar off Cape Hatteras is now being test-drilled. Of course, underwater drilling is in its infancy—merely, incidentally, because it has not been necessary, since we are still not short of oil in spite of the alarmists.

The largest underwater oil project which presages what may come eventually on the Atlantic, Gulf, and California coasts, is at Lake Maracaibo, Venezuela. Here a 50-mile shore strip is one of the world's great sources of oil. As I write this, a geologist friend of mine is taking a plane for Lake Maracaibo in the capacity of geophysicist for one of the West coast oil companies. From him I learned many of the startling processes employed in tapping nature's undersea oil domes.

FOR the past several years, secret surveys have been going on in various states by major oil companies. New, vastly rich deposits have been found in Wyoming, Texas, Oklahoma, Louisiana, and two or three South Atlantic states. But by far the most promising discoveries are the

"domes" charted along the United States' continental shelf. While scientific exploration goes on for oil held in Davy Jones' Locker, it might be well to mention that there are a number of states not now producing oil which will, when the time comes, be ready to support many wells. These are Arizona, Delaware, Georgia, Iowa, Maryland, Massachusetts, Minnesota, Missouri, New Jersey, Oregon, North Carolina, South Carolina, North and South Dakota, Utah, Virginia, and Washington.

Everyday, new techniques are developed in order to tap nature's vast storehouses below the land and below the sea. Engineers have had to invent every step of the way for men to seek oil far at sea. Drill deck footings were established on giant concrete piles up to 150 feet in length. For greater lengths, hollow metal piles encased with concrete were used. When the time comes to drill in extremely deep water off our coasts, the industry will know how.

The rock formations in which oil is found are usually characteristic in shape, and geology and geophysics have reduced to a science the search for such formations. Much of the most promising and easily accessible *land* areas of the world have already been investigated, but the demand for petroleum is insatiable.

At this time, location, drilling, and production in water deeper than a few hundred feet must await the techniques of some future Jules Verne. The first problem is field location; here, extensions of surface geophysical operations are used at present, with much the same success as on land. The seismic method of locating possible oil-bearing structures has been used in the Gulf of Mexico to map formations as far as 26 miles offshore. Water, naturally, complicates the problem of locating the explosives and recording instruments, such as seismographs—the latter used to detect oil-bearing strata by recording the intervals between the receipt of the sound waves reflected by these and overlying layers.

Another well-known tool of the geophysicist, the gravimeter (here a waterproof variety) has also been used by several major companies for underwater exploration. This device is helpful in the location of those geological deformations with which oil is often associated. The gravimeter measures the pull of gravity at various points, and its data may be interpreted from an understanding of the density variations of the hidden rocks. For example, igneous rocks are usually quite dense, and where these approach the surface, as at the crest of a dome, the gravity pull is a little greater, although only the most sensitive instrument could tell it. Salt domes present a reverse case.

Supporting the derrick and other equipment necessary for drilling the well (once indications of oil-bearing structures are found) is no mean feat when the drilling site is under water.

The methods used vary according to the depth of the water above the site. Where the water is shallow enough to permit it, the equipment is towed to the location in a high-walled barge which is sunk to the bottom, its sides forming a caisson against the water surrounding it. The largest submersible barges are designed for op-

eration in from 10 to 15 feet of water. In depths less than 10 feet there is not enough water to float these barges, and in greater depths than 15 feet they are flooded.

In the bayous of Louisiana, where the water level fluctuates between substantial dryness and over 20 feet at flood stage, artificial islands have been constructed, using earth excavated from the canals and slips dredged for the locations. These were packed and covered with timber mats, and the drilling equipment was supported on them. Another man-made, 9,000-foot-square island was used to drill a well off Prince Edward island in the Gulf of St. Lawrence. This was of wood-cribbing construction, floated to the location, and there filled with rock and concrete. The drilling derrick was supported on concrete columns reaching to solid bedrock.

PREFABRICATED, reinforced-concrete piling, driven deep into the earth, has been used at Lake Maracaibo, at depths up to about 60 feet and as far as 7 miles from land; piles used are about 130 feet long and 24 inches square.

For deeper water, interesting buoyant foundations have been suggested. Mounted on skids of air-filled steel pipe, with legs of like material, these would be built in sections and towed by skidding along the ocean's floor until the first section is barely above the surface. Then the next section would be erected atop the first, and towing resumed. With such foundations, it is believed possible to exploit fields 100 fathoms (600 feet) underwater, such as the continental shelves which surround the United States as far as 100 miles out to sea.

Directional drilling, in which the drilling bit is deliberately deflected from the vertical, has been used for both shore-based and offshore operations. Some 90 wells of the first type have been drilled on the Pacific coast, reaching sands 4,000 feet beneath the ocean floor at points. From a single offshore foundation, which has been erected as far as 1½ miles from land, it is possible to drill a network of wells covering an area of about one square mile.

THE fascinating search for oil includes the use of the seismograph, which is playing a spectacular part in the more precise location of the "traps" in which oil may have accumulated. Seismograph crews actually create artificial earthquakes by setting off dynamite charges under the ground. The explosion causes elastic waves to penetrate deeply into the earth where they are reflected back and photographed by delicate instruments.

By skillfully interpreting the reflections, the geophysicist can determine

¶ "THE *rock formations in which oil is found are usually characteristic in shape, and geology and geophysics have reduced to a science the search for such formations. Much of the most promising and easily accessible* LAND *areas of the world have already been investigated, but the demand for petroleum is insatiable.*"

whether or not the nature of the underlying structures warrants the gamble of drilling.

It was the recording of a few large accidental explosions by earthquake seismographs that led to the seismic method of studying subsurface strata of the earth in quest of oil.

Telltale electrical characteristics which distinguish the different strata penetrated in drilling for oil now provide clues to the prospects of success. Electric logging is a relatively new practice in the industry, but its use is now an accepted routine operation on practically every well drilled. Formerly, knowledge of the strata could be gained only by examining the cuttings from the drilling mud, and the information was not always reliable.

IN electric logging a metal electrode is let down into the well by a cable, and a wire is grounded at the surface to complete the circuit for current supplied by a generator. As the electrode is slowly drawn up, the current through the ground meets varying resistances which identify the nature and content of the rock strata. These variations are photographed and recorded in the form of wavy lines on a chart which provides an accurate guide for geological interpretation.

The log can be compared with those of other logged wells in the area to determine whether the same formations are being encountered, and a great deal of guesswork is thus removed.

Standard Oil Company of Texas uses the electric log in all its drilling activities, as a means of obtaining the most reliable data possible on the tricks nature may have played to upset the calculations of geologists.

Eugene Holman, president of the Standard Oil Company of New Jersey, not only claims that more than 15,000,000,000 barrels of oil will be found in the Western Hemisphere, but that with new techniques we can get a "second crop" of oil from out of old wells. We can flush out remote "lost" deposits of oil and sand by repressuring with gas or flooding with water.

THE United States has 400,000 active oil wells, about 300,000 being "strippers" that are so exhausted they produce only from one-half barrel to 3 barrels a day and account for less than 15 per cent of our total production. Large numbers of these are abandoned yearly because they do not pay or because their flow cannot be restarted after having been left without being pumped for too long an interval.

We often think of oil fields in terms of square miles. Actually, we should think of them in cubic miles. This 3-dimensional situation is due to the simple fact that different layers of oil often exist in one field, sometimes separated by many thousands of feet. And the presence of the deeper oil may not become known until many years after the shallower sand has been tapped. It is found by drilling deeper—vertical exploration.

Examples of this are legion, but a typical illustration is found in the field at Elk Basin, Wyoming. This field was discovered some thirty years ago and wells were drilled 1,000 feet deep. The stand at this level produced for many years and the field neared exhaustion. Then, in 1942, a test well was drilled several thousand feet deeper and encountered a new oil pool, several times larger than the original one. Oil pools

Electric Logging in the Oil Industry

"TELLTALE electrical characteristics which distinguish the different strata penetrated in drilling for oil now provide clues to the prospects of success. Electric logging is a relatively new practice in the industry, but its use is now an accepted routine operation on practically every well drilled. Formerly, knowledge of the strata could be gained only by examining the cuttings from the drilling mud, and the information was not always reliable."

thus often lie one below another, like stories of a building. We are far from having fully tested this vertical frontier, for the average depth of U. S. oil wells in recent years has been less than 5,000 feet, whereas we actually have found oil as deep as 13,000 feet.

How do geologists presume to predict that there are at least 50,000,000,000 barrels of oil yet to be found in the United States? Let Mr. Holman explain.

"In the United States," said he, "there is an area of approximately 2,500,000 square miles of sedimentary rock—the geological name for the kind of rock in which oil is found. Of this area, 1,500,000 square miles are favorable for the accumulation of petroleum. And scarcely half of this territory has been thoroughly explored for oil. Studies of oil discoveries in the past show that, when thoroughly explored, from 1 to 3 per cent of favorable territory produces oil.

"Using only the lowest expectancy, 1 per cent, the geologists' calculations yield the 50,000,000,000-barrel figure. But there still is a chance, and a good one, that 3 per cent or even more of some of the land will produce oil. In this case, the potential 50,000,000,000 may be increased."

Explorations for oil ceased almost entirely during the war. During the last year and a half, scientists of the geological survey of the Department of the Interior, coöperating with the oil industry, found reserves at a greater rate than petroleum was being consumed. This was particularly important since, because of war conditions, average annual consumption rose from 1,500,000,000 barrels in 1940 to 2,500,000,000 barrels last year.

THE greater rate of tapping depleted the oil wells to a serious degree during the war, these geologists say, but not seriously enough to make a dent in the nation's reserves.

The most hopeful oil reserve in the United States is that found in the continental shelf. As soon as the technical difficulties which beset geologists trying to get at the underwater oil are solved, experts believe there will be made available more than double the existing oil reserves.

The natural process of oil making—an underwater occurrence which scientists cannot explain—is continuing all the time, but at a pace approximately one-millionth as fast as consumption throughout the world.

It is also believed synthetic oil can be made from coal which would be as good as natural petroleum. But here, too, there is reason to believe coal reserves in this country are not enough to insure sufficient coal for fuel and also for synthetic manufacturers, including petroleum.

The Germans used petroleum made from coal during the war and their patents are available to United States industry.

UNDER present methods of oil production, only about 25 per cent of the oil in a field is recovered. It is believed that there are 27,000,000,000 barrels of crude oil locked in California's lower oil stratum. The Union Oil Company of California is going about tapping that enormous reservoir. Their method is known as "washing with water," and is taking place at a depth of 4,200 feet.

The process is accomplished by pumping water down a central well into the oil sand. Then the surrounding wells are pumped in the usual manner. In this way the water is circulated through the oil reservoir and washes some of the particles of crude oil loose as it goes.

IT is anticipated that the output wells will produce about 10 barrels of water for each barrel of oil. However, once this emulsion of oil and water is pumped to the surface the two products are separated and the water goes back to the input well to be pumped through the oil formation again.

The method sounds easy, but actually, because of the many complications which enter into the process, it becomes relatively expensive as compared with the standard procedure.

For example, the water going into the oil formation must be free of all impurities and chemically inert with the formation. If this were not the case, after a few days of pumping 2,000 barrels of water into the sand, a dirty water or chemically active water would soon clog the formation and make it impossible to continue washing the sand.

IN Union Oil's particular experiment it is calculated that 36,000,000 barrels, or 21 per cent of the total in the field, have been removed. This would indicate that 136,000,000 barrels still remain in the sand. Of course, it is not even hoped that 100 per cent recovery can be made, but even if 25 per cent of the remaining oil can be recovered it means that California still has a tremendous reserve when this method is applied to a number of fields.

A new age of discovery begins. There will be plenty of oil.

Public Power Pendulum in the Pacific Northwest

It has been swinging against the advocates of public ownership, declares the author. The fact is, he says, that the political power promoters have been swimming against the tide of public opinion ever since 1940.

By JOHN DIERDORFF

Suppose you were taking part in a radio quiz program and had this question popped at you: "In what section of the United States has public ownership of power been voted down at every significant election in the past five years?"

What would *your* answer be?

Would you be surprised to learn that one correct answer, at least, is: "The Pacific Northwest!"?

No one could be blamed for not having that answer on the tip of his tongue, because the volume of public power ballyhoo emanating from the Pacific Northwest in recent years has been in inverse ratio to the results achieved by the propagandists at the polls.

Yet the fact is that the political power promoters have been swimming against the tide of public opinion ever since 1940. It is a paradox of politics that the states of Washington and Oregon, where electric rates have long been the lowest in the nation, should have seen more public ownership battles in the past decade than most regions see in forty years.

A major reason for this is, of course, that the Pacific Northwest is so vastly rich in developed and potential hydroelectric power—and hydro power seems to possess political sex appeal wherever streams meander toward the sea. Even the sluggish, silt-laden "cricks" of Nebraska wooed and won their political beaux!

JUST why hydro power should be more glamorous than other kinds of power is something a practical engineer must find difficult to understand. He can see little difference in principle between building a river dam and powerhouse to generate electricity from one natural resource, and opening a vein of coal or sinking an oil or gas well into the ground to utilize another natural resource for the production of kilowatt hours.

The power politician, however, deals in simple emotional ideas and is usually canny enough to avoid developing the logical corollaries of his argument that water power, being a natural resource, should be publicly owned; *i.e.*, socialized.

In fact, the garden variety of power socialist today is more likely than not to be a self-appointed savior of free enterprise, an eloquent friend of business and industry, and a denunciator of bureaucracy. Electric power which happens to be generated by a water wheel, however, is "different." Your ohm-and-volt politician would socialize it to "undergird" free enterprise, according to the line of patter he uses when making love to a chamber of commerce.

An unimpressed listener to one such semisocialist rather saltily described the speaker as belonging to the "Yes, we'll have a glass of beer but we won't go upstairs!" school of political and economic philosophy.

Running with the members of this school, and constantly nipping at their flanks to keep the course veering to the left, are the disciples of encroaching socialism. To them, socialization of the electric industry is simply a long first step toward socialization of all key industries. But they talk only about the first step. They don't dare to go on to remind the farmer, for example, that the soil he tills is a basic natural resource, like the rain which waters the soil and the sun which warms it.

A SHELF of books could be written about the guerilla warfare that has been carried on against the business-managed electric companies of Washington and Oregon during the past ten years. The sniping has been particularly heavy since the Bonneville Power Administration was established in 1937 and began giving comfortable jobs, transportation, and the free use of a big government sounding board to political power zealots who previously had considered a noncollapsible soap box a great windfall.

The purpose of this article, however, is not to recite the history of the battles. Instead, it is to give a high light picture of their setting, and the trend of the results.

A study of the seven principal electric companies operating in Washington and Oregon shows, for one thing, that the Northwest householder buys his electricity at bargain rates—and uses it generously.

The average price received per kilowatt hour by these companies for residential service is well under 2 cents—ranging down to a low of 1.49 cents. Compared with the 1945 national average of 3.42 cents, even the top figure is more than 40 per cent below that for the nation.

Five of the seven Pacific Northwest systems currently are under the 1.85-cent per kilowatt-hour average last reported for public distributors of TVA power!

In fact, a report of the Washington

Department of Public Utilities shows that for the twelve months ended October 31, 1945, the privately owned electric companies of Washington supplied energy to their 333,812 residential customers at an average price of only 1.67 cents per kilowatt hour, or 10 per cent below the TVA average. Latest published figures for Oregon show 265,321 residential and rural customers served by the private companies of the state at an average kilowatt-hour price of 1.87 cents—neck and neck with the TVA.

IMPORTANT, too, is the fact that the seven Pacific Northwest companies setting these enviable rate records paid 1944 taxes totaling $14,918,717, of which $7,513,046 went to the Federal government. Their reports for 1945 will show even heavier tax payments.

The company with the lowest average rate per kilowatt hour paid out 23 cents of every income dollar in taxes! Another large system paid 20.5 cents in taxes per dollar of revenue.

Average annual use of electricity by residential customers of the Northwest companies reflects vigorous development of the market. One large system reports an average of 3,214 kilowatt hours, more than two and a half times the national average.

Homes that use 6,000 kilowatt hours or more a year are commonplace in the two states. To use such large quantities of electricity in a home it is usually necessary, of course, to have both an electric range and an electric water heater, in addition to the usual lighting and small appliances. Available for automatic water-heating service all through the Northwest are blocks of energy at rates of from 6 to 8 mills per kilowatt hour. Often these bargain blocks of energy can be used for other purposes, too.

The output of public power hokum from the Columbia river basin could easily give a stranger the impression that the private companies, if any, were of no consequence. Thus it is interesting to note that the seven companies referred to serve approximately 750,000 of the 950,000 electric customers in Washington and Oregon. And the great majority of the 200,000-odd customers of public systems are concentrated on the lines of the Seattle and Tacoma municipal operations.

ALTHOUGH relatively low in density of population, Washington and Oregon stand high in the advancement of rural electrification. According to an REA compilation as of July 1, 1945, Washington stood eighth and Oregon ninth among the 48 states in percentage of electrified farms. For states that have more than their share of wide-open spaces, this is a record not to be sneezed at.

The great bulk of the power lines serving the farmers of the two states has been built by the private compa-

¶ "IT *is a paradox of politics that the states of Washington and Oregon, where electric rates have long been the lowest in the nation, should have seen more public ownership battles in the past decade than most regions see in forty years.*"

nies, whose rural line development programs date as far back into electrical history as 1906.

The REA report indicates that 83.6 per cent of Washington farms and 79.9 per cent of those in Oregon now have central station electric service, compared with 44.7 per cent for the United States as a whole.

The unsuspecting citizen who has been exposed to the pretty picture books, arty movies, and adroit press releases of the TVA, probably would be startled to discover in the REA report that Tennessee, "the first public power state," has no more than 25.6 per cent of its farms connected to a power line!

Apparently it isn't true that every clapboard shanty in the storied valley of the Tennessee now has an electric washing machine on the back porch, an electric range in the lean-to kitchen, and a gleaming white refrigerator grinding out ice cubes handy by the stillhouse!

Thus far we have been looking mainly at some of the significant statistical facts about the electric companies of Washington and Oregon. These facts speak well for the extent of their achievements, but tell only part of the story. The $64 question is: "What does the public of the region think about these companies?"

Do the people of Washington and Oregon think they are doing a pretty good job? Or do they side with the "public" power politicians?

There was, of course, a period following the 1933 depression low when the Bonneville name possessed an extraordinary magic, and power companies, nationally and regionally, were being "given the works" for mistakes, real and alleged. Against this background, the power politicians were able to sway a considerable number of counties into voting to organize public utility districts.

In Washington, the big push for PUD's occurred at the 1936, 1938, and 1940 general elections. In 1936 there were 25 county PUD issues on the ballot, and 15 carried. In 1938, there were 14 proposals to form PUD's, and 7 carried. In 1940, there were 10 PUD elections in the state, and only 4 gained approval—exactly the opposite of the 1936 ratio of PUD wins to defeats!

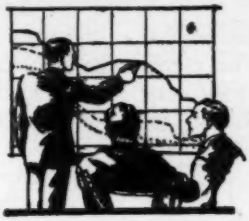
The PUD election epidemic was slower to start in Oregon, with only a few scattered elections up to and including 1937, the year the Bonneville Power Administration was established.

Four PUD proposals were brought to ballot in Oregon during 1938, and 3 of them were voted down. The one tiny district organized on paper shortly thereafter became inactive. In 1939 there were 4 PUD elections in Oregon, with 2 carrying and 2 being defeated.

Then in 1940 came a flood of 17 elections in Oregon on the question of forming PUD's. Eleven of the 17 resulted in a negative vote, with the most populous area rejecting the PUD idea by a vote of more than 2 to 1. This was the city of Portland, where citizens took with a large grain of salt the glittering promises of the PUD promoters.

Since 1940 the record of public ownership elections in both Oregon and Washington contains no comfort for the power politicians.

The first political power issue to



Comparison of Cost of Electricity

". . . a report of the Washington Department of Public Utilities shows that for the twelve months ended October 31, 1945, the privately owned electric companies of Washington supplied energy to their 333,812 residential customers at an average price of only 1.67 cents per kilowatt hour, or 10 per cent below the TVA average."

come to vote in 1941 was on the question of municipal ownership in the city of Spokane, Washington. A vigorous campaign was waged by the proponents, whose propaganda material included a glowing "engineering" report prepared by the nation's most active firm of propublic ownership consultants.

The Spokane election was held March 12, 1941, and municipal ownership came out on the short end of a 17,229-to-26,608 vote.

In May, 1941, there were 2 PUD elections in Oregon. The first of these was in Clatsop county, which rejected the PUD proposal by a vote of 2,823 to 3,019.

A few days later, the citizens of Baker county ploughed under a PUD by the impressive margin of 808 to 2,393. That closed the book for 1941.

With the advent of war, most people became too busy with urgent wartime tasks to give any thought to power politics, but even a war couldn't prevent some zealous groups from advancing PUD formation proposals.

One of these was in Washington county, Oregon, where 3 previous PUD proposals had been turned down. This time the proponents sought to beat the game by drawing up a plan for a strictly rural PUD, excluding the towns which had cast a strongly adverse vote on the earlier proposals.

But this gerrymandering didn't get the answer! The rural vote at an election on May 15, 1942, was against the PUD by a score of 1,820 to 3,201.

In Adams county, Washington, where a PUD had been beaten in 1938 and again in 1940, the political ownership zealots decided to try it once more at the general election in November, 1942. Like their Oregon compatriots, they took a licking—766 to 1,053!

Almost unbelievably, 1943 went by without a public ownership election in either state.

In 1944 there were no PUD formation elections in Oregon, but the state of Washington supplied further con-

vincing evidence of the trend away from political power.

On the Washington ballot in November, 1944, was a referendum measure which would have opened the door to the creation of super-PUD's possessed of the power to gobble up the business-managed electric systems in short order.

The bill was supported by the political power zealots with every argument they could imagine. The power companies, which fought the bill actively and openly, were accused over and over again of spending "millions" to "thwart the will of the people." No state proposal ever received a more thorough airing.

When the ballots were counted, the public power bill was found to be snowed under by a vote of 373,051 to 297,919. It was the largest vote ever cast on a public power measure in Washington. The 75,132 majority against the bill was piled up from every section of the state.

THERE were several interesting side lights on the vote. One was the fact that in the three counties having the largest grange membership in the state — Whitman, Spokane, and Yakima — 59.1 per cent of the votes were against the bill as compared with the state average of 55.6 per cent.

In Garfield county, which has one of the largest grange memberships in proportion to the total population, 68.4 per cent of the votes were against the bill, the highest ratio of any county in the state!

Yet the political power leaders in the Washington State Grange were the noisiest supporters of Referendum 25. The organization's weekly publication devoted hundreds of inches of space to the campaign. A statewide radio program clamored week after week for the measure. No stone was left unturned in the attempt to create the impression that the grange membership was solidly for the bill.

Another interesting angle was the result of the vote in Seattle, where the city's electric system has been in competition with Puget Sound Power & Light Company for the past forty years.

The big argument advanced for Referendum 25 in Seattle was that it would make it easy for the Puget Company's system to be taken over by a super-PUD, in a deal which would give City Light the Seattle properties.

THE idea of eliminating competition, however, did not appear to have much appeal to Seattle users of electricity, even though long exposed to arguments that a merger would lower their rates. They cast 62.1 per cent of their votes against the bill and only 37.9 per cent in favor of it, a result which said rather plainly that Seattle citizens think the presence of a business-managed system is a good thing to keep City Light on its toes.

There were other straws in the 1944 election wind, too. While the citizens of Seattle were voting down Referendum 25, their neighbors in the rural sections of King county were voting down a PUD for the third time, by a substantial margin.

In Yakima county, where a PUD was formed by a close vote in 1940, the one remaining public power diehard on the 3-man PUD commission was voted out of office, and a conservative orchardist elected in his place. The

other two of the original three commissioners were retired by the voters in 1942. In Clark county, Washington, where the same group of three commissioners had served since a PUD was formed in 1938, the voters indicated they weren't too happy about repeated PUD tax levies by retiring the one commissioner who was up for reëlection in 1944.

More recently in Clark county there was an overwhelming, though unofficial, expression of sentiment in favor of retaining private electric service.

FOLLOWING the institution of condemnation suits against the two electric companies serving the area (an action taken by the two public power extremists remaining on the PUD board), a postcard poll of the 17,000 electric users in the area was conducted by the companies.

Electric users were asked to mark one of two simple statements on a return card, which bore no identifying marks:

> I like my present electric service organization and want it to continue serving me .....( )
> I would rather be served by the PUD and favor taking over your company by condemnation .....( )

The results were most convincing, to everyone except the "public-power-at-any-cost" zealots. More than 6,000 ballots were marked and mailed back, a phenomenal return for such a poll. And of these, *85.2 per cent were in favor of retaining their private company service!*

"We don't see how any fair-minded person—whether he is for or against public ownership—can help but admit that a substantial majority of the citizens of Clark county are opposed to a change in the present setup," commented the *Vancouver Columbian,* leading daily of the county.

The power politicians, however, shrugged their shoulders and brushed aside the poll as merely indicating that the public needed more "education."

There is another phase of the political power battle that should be mentioned. That is the continuing attempt of the power socialists to slip through Congress some kind of an "authority" for the Pacific Northwest, which would give the Bonneville Power Administration, or its successor, arbitrary rights to take over all the business-managed electric systems of the region.

A NUMBER of bills with such "take-over" provisions have been introduced in the past five or six years. Some of them, like the current CVA bills, would set up a 3-man Federal corporation on the order of the TVA. Others would have given a greatly enlarged and rechristened Bonneville Power Administration the right to

¶ "ALTHOUGH *relatively low in density of population, Washington and Oregon stand high in the advancement of rural electrification. According to an REA compilation as of July 1, 1945, Washington stood eighth and Oregon ninth among the 48 states in percentage of electrified farms. For states that have more than their share of wide-open spaces, this is a record not to be sneezed at.*"

liquidate the electric companies and create a huge Federal power supply monopoly in the Pacific Northwest.

The practical effect of any of these proposals would be to force public ownership on every community in Oregon and Washington, regardless of local wishes.

Typical of the "power administration" variety of bill was the Bone-Smith proposal introduced early in 1942, which came to hearing before a joint subcommittee of the Senate and House in June of that year, and was vociferously supported by all the public power factions.

A long parade of witnesses, including several Bonneville staff members, testified for the bill before the hearing was adjourned. Time did not permit more than two or three adverse witnesses to appear in June, and the plan was to resume the hearing later in the year.

Proponents of the bill leaned heavily on assertions that the "take-over" provision was a feature having great popular support in the areas affected. So in preparation for the expected resumption of the hearing, four of the electric companies asked an independent public opinion survey organization of recognized standing to find out what the people themselves really thought about it.

THE survey was set up on a thoroughly scientific basis, and the organization making it was fully prepared to back up its methods and findings before the congressional committee.

The key question asked 2,010 adult residents of Oregon and Washington was directly on the subject of whether or not they thought the proposed Columbia Valley Authority should be given the power to take over the electric companies of the two states.

The response was almost two to one in the negative! There were 46.1 per cent opposing the idea as compared with only 24 per cent in favor of it. The remaining 29.9 per cent hadn't thought about it enough to venture an opinion.

The same respondents were also asked: "Do you consider your present electric rates reasonable?"

"Yes" was the answer given by 78.6 per cent of the persons interviewed. Only 15.8 per cent replied in the negative, and 5.6 per cent had no opinion.

Another question asked in the survey was this: "Do you think the question of public ownership in Washington and Oregon should be decided by Congress or by a vote of the communities directly affected?"

This drew an emphatic response of nearly eleven to one in favor of leaving the decision to the local communities —83.7 per cent to 7.5 per cent, with only 8.8 per cent no opinion.

AN amusing side-light revealed by the survey was that only about one person out of seven in the state of Washington knew who introduced the bill in Congress, despite the fact that its sponsors in both the House and Senate were members of the Washington delegation and had been insisting that the people of their state had given them an overwhelming mandate for such legislation.

As it happened, much more urgent matters absorbed the attention of Congress and the hearing was never resumed. The Bone-Smith bill died in committee, and the results of the sur-

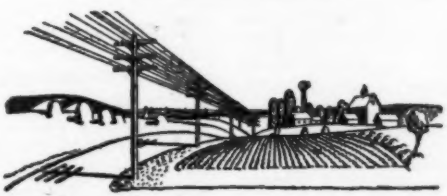
vey simply were published as a matter of public interest.

The demonstrated trend of public opinion away from the public ownership idea has not gone unnoticed by the power socialists. They can see the swing of the pendulum as well as anyone, which accounts for the note of frantic anguish in their more recent outcries.

It also accounts for their present interest in various intricate schemes for buying control of this or that company in the Pacific Northwest through "nonprofit" dummy corporations or "coöperatives."

Cost to the public of these new devices of the "public" power financial promoters is ignored, or sought to be hidden behind a smoke screen of confusing propaganda. Glossed over, too, is the fact that none of these schemes would give the people affected a popular vote on the question of whether or not they want to be bound by some back-room deal.

Some strange alliances have been formed—so strange, in fact, and so inherently unstable that any idealistic public power believer must be seriously concerned about the future of his cause.



"WITHIN *the next few years the number of electrified farms may almost double. Some 2,750,000 farms are now electrified.*

"A market of $4,000,000,000 is seen in the next five years. This is broken down into $1,000,000,000 for line construction, $500,000,000 for wiring, and $2,500,000,000 for electrical appliances and machinery. A poll of 200,000 electrified farms, according to the Electrical Manufacturers Public Information Center, disclosed that these farms had 33,000 refrigerators, 23,000 radios, 15,000 vacuum cleaners, 16,000 ranges, 6,000 water heaters, 35,000 irons, 10,000 toasters, and 4,000 each of clocks, waffle irons, coffee makers, and shavers.

"Low-priced but efficient farm implements now being produced are likely, in the opinion of authorities, to switch the trend from big farms to smaller acreages. Small production becomes profitable. This would increase the farm population which has been declining, and expand the market for electrical products still further."

—EDITORIAL STATEMENT,
Nation's Business.

Government Utility Happenings

Urban Operations of REA Draw Congressional Fire

At just what point does rural electrification, as advanced by the Rural Electrification Administration through its borrower coöperatives, cease to be the strictly rural undertaking that its congressional "fathers" authorized? Answers to that poser, as supplied by REA Administrator Claude Wickard and his staff on one hand and by Congressmen with diverging views on the other, generated most of the heat for one of Washington's warmest debates of recent days.

The argument, which was staged in mid-March before the full membership of the House Interstate and Foreign Commerce Committee, was by no means new. Throughout nearly a year of hearings on the Poage Bill (HR 1742) a subcommittee of the same House group heard sporadic wrangling along similar lines. When this subcommittee finally scrapped the Poage measure and reported out a "clean bill" in a compromise move, it appeared that the debate was ended. In the Harris Bill (HR 5555) the subcommittee chairman, Representative Oren Harris, Democrat of Arkansas, wrote a provision limiting REA's authority to grant loans for purchasing existing power systems in towns of more than 1,500 population.

After receiving the new bill, the committee amended the restrictive provisions to flatly forbid REA from lending funds for the acquisition of existing power systems in municipalities of more than 2,500 population, thus indicating a somewhat more liberal conception of a "rural area." The amendment, however, further required that a prospective loan for the acquisition, construction, or extension of generating and transmission facilities in smaller towns be approved in advance by the "state authority having jurisdiction in the premises." In case an acquisition loan of the latter type were projected in some state having no such state authority, the amendment would require approval —in advance—by a majority of the electric consumers of the town involved.

Thus the committee disposed of the expressed opinions of several of its members to the effect that the REA program was becoming more urban than rural. At this point, however, Administrator Wickard was invited to testify on the Harris Bill—before it was reported to Congress. Wickard attacked the bill in general on the ground that it "would retard and restrict and, in many cases, prevent the achievement" of the basic purpose of the REA program, "the maximum extensions of electric service to unserved farm families." Later, while being questioned by members of the committee, he expressed particular distaste for the provisions limiting REA-backed purchases of existing power systems.

Led by Representative Hinshaw, Republican of California, Congressmen defending the bill pointed to provisions of the Rural Electrification Act of 1936, which defined REA's area of operations. Section 4 of that act, they argued, granted the administrator authority to make loans only on the following conditions:

> . . . for the purpose of financing the construction and operation of generating plants, electric transmission and distribution lines, or systems for the furnishing of electric energy to persons in rural areas who are not receiving central station service . . .

Nothing in this language or in any other law passed by Congress, Representative Hinshaw declared, specifically authorized REA to acquire existing power systems. He further insisted that the 1936 act directed the agency to operate within definitely rural areas, as follows:

> Section 13. As used in this act the term "rural area" shall be deemed to mean any area of the United States not included within the boundaries of any city, village, or borough having a population in excess of 1,500 inhabitants, and such term shall be deemed to include both the farm and nonfarm population thereof . . .

ADMITTING that REA-financed systems now are operating in 28 towns of more than 1,500 population, Wickard insisted that REA's activities in these areas had not violated the intent of Congress as outlined in the 1936 act. All loans made for the purpose of constructing power systems or for acquiring systems in such towns, he stated, had as their basic objective the bringing of electric service to previously unserved people in strictly rural areas, in accordance with the definition given in the act. This objective has been attained, he added, by extending distribution lines from the municipal systems into rural areas surrounding them.

Wickard and members of his legal staff referred to testimony presented during the Poage Bill hearings to back up his contention that these activities had not violated the intent of Congress. He cited an opinion rendered by the solicitor of the Department of Agriculture in November, 1942, in regard to the legality of loans granted by REA to coöperatives for the purpose of purchasing existing power systems in towns of more than 1,500 population. This opinion held, in part:

> . . . the unserved persons whose benefit is the purpose of the loan must be in rural areas, but all the facilities necessary to serve them need not be. In its legal aspects, the problem is no different than the financing of a generating plant which serves a rural system but which is located in a city of more than 1,500 population. . . . The fact that the urban consumers will be collaterally benefited or affected is immaterial to the legal question here under discussion. . . .
>
> The only general criterion is a requirement that the ultimate system be predominantly rural in order that REA loan policy may be kept within the spirit of the statute and within the general field of activity that is connoted by the term "rural electrification."

Also cited was an opinion of the Comptroller General of the United States, as expressed in a letter to a member of the House Interstate and Foreign Commerce Committee. This statement drew the following conclusions:

> Obviously, where an application for a loan under the provisions of § 4 of the Rural Electrification Act of 1936, *supra*, is made on the basis that the entire amount payable under the requested loan contract is to be used exclusively for the purchase of existing electric facilities and the only persons to be benefited or affected are persons already served by such facilities, the administrator would not be justified in authorizing the loan . . . But a different situation is presented where the administrator desires to finance the construction of an electric transmission and distribution system designed to furnish electric energy to unserved persons in rural areas and which requires, for its effective operation, the erection of certain facilities and the acquisition of other facilities already providing service to persons in such areas; and since the acquisition of the existing facilities and the incorporation thereof into the larger, integrated system in such a case would merely constitute the incidental means by which the essential statutory purpose of providing electricity to unserved persons in rural areas would be accomplished, there would appear to be a substantial basis for the inclusion in the loan authorized by the administrator of an amount to cover the acquisition of such facilities.

WICKARD assured the committeemen that REA-financed systems in large towns were essential, in certain instances, in order to serve unelectrified rural areas in the vicinity on a sound, economic basis. In all cases, he said, the service to municipal consumers had remained incidental to this purpose. He held that he deemed such activities as proper, in view of the fact that the Congress had never taken any action disapproving these operations by REA.

Representative Hinshaw acrimoniously remarked that Federal agencies often interpreted legislation in a manner dif-

fering from the intent of the Congress in enacting the laws. The debate in Congress on the Rural Electrification Act, he added, clearly showed that it was the intent of Congress that REA was to serve exclusively in rural areas with towns of 1,500 population or less. In this opinion Representative Boren, Democrat of Oklahoma, concurred. Congressman Boren then requested that REA, if it did not care for the 1,500 population limit, set its own figure for the size of town or city which it should not enter in the future. This proposal was rejected by Administrator Wickard on the ground that he could foresee future circumstances under which REA might find it "necessary" to extend its activities into still larger towns. He also was unable to suggest any other formula which would accomplish this result.

An interesting feature of Wickard's testimony was his speculation on the expansion of the rural electrification program into the more thinly populated sections of the South and West. In such areas, he said, it will be impossible for REA borrowers to serve all the rural people without making acquisitions of some of the systems currently serving small towns.

"In the West, especially," he declared, "we shall find small cities, possibly some with municipally owned electric plants, which are unable to extend their power lines to serve the surrounding rural areas. In those places I believe that the rural people and the town people will get together and ask the REA to grant them a loan so that the whole area can receive electric service."

Wickard also assured the committee that REA had no intention of making loans for facilities in strictly urban areas.

At this point Congressman Boren asked: "If you fight so hard to retain the privilege of entering towns of any size whatsoever, why should not this committee fear your future intentions?"

THE Harris Bill also would provide $150,000,000 for REA loans during each of the next three fiscal years, or a total of $450,000,000. This compares with the $585,000,000 contemplated in the Poage Bill for a similar 3-year lending program. Up to a few months ago, the staff of the agency insisted that some form of lump-sum appropriation of this type was essential to the planning of an orderly program of rural electrification. Wickard told the committeemen, however, that he no longer is interested in this provision of the Harris Bill. He said:

> When I testified before the subcommittee last June, REA was operating on a loan fund budget of $25,000,000 and the Congress had authorized $80,000,000 in loans in the regular 1946 Agriculture Appropriations Act. Subsequent to my testimony, REA was given $120,000,000 additional in loan authorizations for fiscal 1946 and a supplemental $100,000,000 authorization is now in the process of enactment. The House has already passed the 1947 Agriculture Appropriations Act providing $250,000,000 in loan authorizations. Therefore, for the fiscal years 1946 and 1947, there is in prospect $550,000,000 in loan fund authorizations.

Thus, he concluded, one of the basic provisions of the Poage Bill—the grant of increased funds—already had been supplied by generous appropriation bills.

CONGRESSIONAL concern has been mounting recently over the tendency of administrative agencies to assume, through opinions of their legal staffs, authorities not expressly granted them by law. Another House committee (Irrigation and Reclamation) has been studying proposed amendments to reclamation laws for the explicit purpose of setting aside an opinion of a solicitor of the Interior Department. This opinion, in regard to the amortization of Federal reclamation projects involving power development, has been described by several Congressman as going far beyond the intent of Congress in enacting reclamation laws. The proposed amendment to set aside Interior's interpretation is the Robinson Bill (HR 5124), which apparently has a much better chance of gaining congressional approval than any amendment of rural

electrification laws as proposed in the Harris Bill.

Krug Offers Coöperation with Private Enterprise

FUTURE coöperation of the Interior Department with private enterprise was suggested by Julius A. Krug as he took over his duties as Secretary on March 18th. In a brief address after taking the oath of office as administered by Supreme Court Justice Rutledge, Krug outlined in general terms the policies he intends to pursue in guiding Interior's numerous activities.

His remarks in regard to coöperation with private enterprise follow:

> I shall seek to carry out our many diversified functions by encouraging the participation of individuals and private corporations in the development of the country. Government action will be resorted to only when public purposes cannot otherwise be accomplished, but in such cases the department will carry out the mandate of the Congress without fear or compromise with private interests seeking to obstruct necessary action.

Any changes in Interior's administrative policies, he added, will be effected to make these policies conform with three general principles, which he declared are sometimes "overlooked in the maze of high-pressure personalities" in government agencies. He listed these principles as follows:

> 1. The department will operate as a single going concern through the teamwork of its bureaus and agencies. We will not need any "grandstand" performers.
> 2. The activities and functions of the department will be discharged, delegated, or redistributed, to produce the best results for the people of the country. The department's prestige or the prestige of its executives will not be permitted to confuse the issue of how the job can best be done.
> 3. Merit, competency, and devotion to public service will provide the criteria for employment or advancement. And, finally, I might say the department will always recognized that it is employed by and works for the people of the United States.

The new Secretary indicated that he probably will check any future efforts by his subordinates to delegate to the department any authority not expressly granted to it by Congress. In this respect, he said:

> During my period of office, the affairs of the Department of the Interior will be guided scrupulously by the will of the people as expressed through Congress. I admit that sometimes my own personal views will differ, and I shall not hesitate to state and urge them. But where they are not supported in the Congress they will not affect the activities of the department.

SECRETARY Krug also announced the appointment by the President of Oscar L. Chapman as Under Secretary of Interior. As Assistant Secretary, Chapman took over the administrative direction of the department after the resignation of Harold Ickes. His new promotion fills an office which has been vacant since former Under Secretary Abe Fortas left the department to enter a private law firm on January 15th.

The Chapman appointment was confirmed by the Senate a few days after Krug's announcement.

Municipal Plant Vote Unfavorable

PROPONENTS of government control of electric utilities were overwhelmingly defeated on March 19th when the people in Tulsa, Muskogee, and McAlester, Oklahoma, voted against candidates running on municipal ownership tickets. The issue of each election was to decide if the people would discontinue the services of the electric utilities and obtain their power from government-owned and -operated hydroelectric plants. Much publicity was devoted to the municipal and government side of the issue.

George A. Davis, president, Oklahoma Gas & Electric Company, said "the results of these elections, following in the wake of the refusal on the part of the citizens of Skiatook to reject business-managed and tax-paying utilities in favor of government-subsidized power, is further proof that the people, when given the opportunity to vote, do not express preference for government competition."

Wire and Wireless Communication

TELEGRAPH rate increase to offset wage boosts? Observers are watching carefully the reaction of the Federal Communications Commission to a petition filed last month by Western Union Telegraph Company for a 10 per cent increase in domestic rates, including day and night letter rates. This increase is calculated to yield approximately $19,300,000 in additional annual revenue, about enough to offset retroactive and future wage increases ordered by the now defunct War Labor Board. FCC is expected to grant most, if not all, relief sought, probably as part of a general overhauling of telegraph rate schedules in the interest of uniformity and simplicity.

It is the direct result of the last order entered by the War Labor Board on December 29, 1945, directing Western Union to increase wage rates approximately $25,000,000 a year, and to make retroactive wage payments totaling $31,000,000 a year. The FCC has already indicated its concern before congressional committees about the continued solvency of the Western Union operations, in view of the increasing competition from fast air mail and cut rates on long-distance telephone calls.

Changes sought by Western Union are as follows:

1. A 10 per cent increase in charges for regular telegram service, including day and night letters and press messages.
2. Establishment of a new night letter rate schedule based on distances.
3. Discontinuance of the practice of forwarding messages beyond their original destination without additional charge.
4. Increased charges on money orders for more than $25.
5. Higher rates on code messages and the discontinuance of tourist telegrams.
6. Elimination of the 20 per cent differential between government and regular commercial rates.

THE Western Union maintained that the proposed higher rates "are essential to enable the company to continue to serve the public effectively and to enable it to maintain and protect its financial integrity."

Telegraph rate schedules have become increasingly chaotic since the absorption by Western Union of the Postal Telegraph business. If, however, the FCC grants a rate increase based wholly or largely upon direct effect of a government-ordered wage increase, it will mark the first clear-cut example of such regulatory action by a Federal commission during the current period of wage controversy.

It would mark an interesting precedent for similar situations now building up in the jurisdiction of other Federal and state regulatory commissions, involving other types of utilities which have had to increase wages substantially to avoid or settle labor disputes.

The Federal Communications Commission has ordered a hearing on the petition, which will begin on April 29th in Washington.

Western Union early last month said net income from current operations in

1945 was $4,434,505, a return of 2.8 per cent on capital stock and surplus after charging retroactive wages for 1945 arising from recent awards of the War Labor Board. The report for 1944, restated for purpose of comparison to include retroactive wages applicable to that year, showed a deficit of $349,000.

As set forth in a statement to the FCC of results for 1945, the inclusion of extraordinary adjustments applicable to prior years resulted in a deficit of $5,148,534 for 1945. The adjustments were occasioned by provision for retroactive wages, unrecoverable advances to certain lessor companies, and recoverable income taxes.

No liability for Federal taxes on income was indicated for 1945 because of the heavy burden of wages, it said.

Gross operating revenues in 1945 reached a record high of $192,892,138, an increase of 3.8 per cent above 1944 levels. Cable system revenues decreased after VJ-Day, but this was more than offset by larger volume of domestic business resulting from reconversion activities and the return of military personnel.

* * * *

THE National Association of Broadcasters recently asserted that the March 7th report by the Federal Communications Commission on the public responsibility of broadcasters "reveals a desire to impose artificial and arbitrary controls over what the people of this country shall hear."

In a 400-word answer to the FCC, the NAB, which is the trade association of the radio industry and represents more than 700 radio stations and networks, charged that the FCC report reflects a "philosophy of government control which raises grave questions of constitutionality."

The NAB statement, issued through Justin Miller, president of the organization, said that the FCC report "overlooks completely freedom of speech in radio broadcasting, which was a primary consideration in the mind of Congress when it passed the Communications Act."

In its report, the FCC suggests that broadcasting companies correct their "advertising excesses" and balance their commercial programs with more public service broadcasts. The agency particularly deplored the "piling up" of soap operas during the morning.

Mr. Miller's statement said that the report indicated a "reconversion to that type of government control and regulation which our forefathers struggled to escape." "In this instance," the statement added, "just as with the issue of freedom of the press, there can be no compromise."

Mr. Miller said that the FCC, relying upon its own administrative practices, "now asserts powers far beyond those given to it by Congress and inconsistent with the constitutional limitations under which Congress acted."

The statement said that the radio broadcasters recognize frankly that "they, like all other human beings and institutions, are far from perfect" and will continue in the future to improve programs and other phases of broadcasting. The statement continued:

> On the other hand, the broadcasters are fully aware that they are the champions of the people in resisting both direct and indirect encroachment of government upon the freedom of speech.
>
> Encroachments which in their inception may seem innocuous to many people—and which perhaps may seem justified in the light of isolated instances of bad taste or poor judgment—nevertheless strike at the very heart of our system of broadcasting and constitute bold steps toward government domination which may eventually deprive us of fundamental rights.

The FCC, following its report, announced it was asking about 300 stations now operating on temporary licenses to submit cross sections of their 1945 logs to determine how much broadcasting time is being allotted to public service and nonprofit programs.

* * * *

PRESIDENT Truman on March 21st announced his selection of Rosel H. Hyde of Idaho to be a member of the Federal Communications Commission.

Hyde has been counsel for the FCC.

Hyde, the President said, was selected for the Republican vacancy on the FCC, left by the recent death of William Wills of Vermont. He joined the Federal Radio Commission, FCC's predecessor in 1928, soon after its establishment, and has been with the commission in various capacities since.

In October, 1942, Hyde became assistant general counsel in charge of broadcast matters and subsequently moved up to general counsel to fill the vacancy created by the appointment of Charles R. Denny to membership on the commission. He is a native of Downey, Idaho.

* * * *

FOUR southern states have shown indications of concern over the adequacy of telephone service, particularly in rural and small community areas. In Alabama, Florida, and Mississippi, complaints have been lodged with the respective regulatory commissions, while in Virginia resolutions have been proposed in the state legislature to direct the Virginia Corporation Commission to make a thorough and complete study of rates and service of all telephone companies in the state. These resolutions call attention to the fact that "telephone service in many areas of the state leaves much to be desired." Subsequently, it was understood that the resolutions were withdrawn with the understanding that the Virginia commission would attempt to work out some program with certain telephone companies.

The Virginia commission has issued an order calling one independent telephone company to show cause why it should not be required to put into effect immediate service improvements.

Businessmen in the town of Highlands, Texas, near Houston, recently complained before local authorities about telephone service. Apparently the difficulty lies in an accumulation of deferred plant maintenance and improvements, which necessarily resulted from the shortage of man power and materials—a condition which still obtains.

Southern telephone companies, as well as telephone companies in other areas, also are concerned about wage increases already granted or threatened as the result of labor disputes and the pending increased Minimum Wage Bill now before Congress. They are apprehensive lest anticipated revenues from current rate schedules may prove insufficient to warrant extensive plant improvements and expansion in the light of expected increases in operating expenses.

HOWEVER, as U. S. Senator Morse (Democrat, Oregon) stated in debating the Wage-Hour Bill on the floor of the Senate on March 12th: "We members of the public ought to be willing to pay telephone rates, for example, sufficiently high so that telephone workers all over the country can receive decent wages." The Senator also attacked discrimination against female employees in determining wage levels.

Telephone companies generally expected that service complaints could be eased off in the future as man power and materials become more available to take care of deferred maintenance and necessary plant expansion. Meantime, however, a continued flurry of service complaints appeared to be in prospect.

* * * *

SETTLEMENT of the 65-day strike by 17,300 production workers in Western Electric Company plants in New York and New Jersey was announced jointly on March 8th by the company and union, the Western Electric Employees Association.

The announcement came after a 10-hour joint conference at the company's offices in the American Telephone and Telegraph Company building, New York city. Midway in the conference, Frank J. Fitzsimmons, president of the union of the Western Electric Employees Association, announced that unless settlement was reached by 8 PM he planned to ask the National Federation of Telephone Workers, with which his union is affiliated, to renew the nation-wide strike

plans which were terminated on March 7th.

Mr. Fitzsimmons and Frank J. Hammel, labor relations manager of Western Electric, in announcing the settlement, said an interim agreement had been signed by the disputants, subject to ratification by the general membership of the union.

Mr. Fitzsimmons left New York immediately for Jersey City, where a membership meeting had already been called. The 5,000 members there unanimously ratified the agreement. However, the membership turned down a company proposal submitted by Mr. Fitzsimmons that they could have their vacation pay now if they agreed to work straight through the summer to make up the time lost in the strike.

Under terms of the agreement, maintenance workers returned to work on March 9th, and the bulk of the strikers on March 11th. The March 11th return, it was said, marked the first time in two months that there had not been at least one of the AT&T subsidiaries on strike.

A nation-wide strike among workers of the AT&T subsidiaries was halted shortly before its 6 AM deadline on March 7th through an agreement reached in Washington between AT&T and the Federation of Long Lines Workers, an NFTW affiliate. The agreement called for an 18.2 per cent flat increase for AT&T Long Lines workers and was described by Federal conciliators as providing the wage pattern by which industrial peace might be brought to the strife-torn telephone industry.

* * * *

TWO-WAY radiotelephone communication from taxicabs came to Memphis, Tennessee, last month on an experimental basis, heralding the day when taxicab drivers will be in constant communication with their company's dispatcher and passengers may communicate with their homes or offices while riding to or from work.

For several hours, Jimmy Moore, manager of Yellow Cab Company, toured Memphis streets in a specially equipped car that was in constant radiotelephonic communication with a temporary transmitting station established in a room in the Peabody hotel. The conversation, both back and forth, was clear.

Engineers for the Radio Corporation of America set up the equipment under an RCA experimental license for the purpose of running tests and running surveys for the Yellow Cab Company. The experimental auto was ridden by Harry C. Hill and the temporary transmitter operated by J. S. Gremillion, both of RCA's regional sales headquarters at Dallas, Texas.

Yellow Cab has applied to the Federal Communications Commission for an experimental license covering 25 of its cabs starting about June 1st, after which, according to present plans, its remaining 75 cabs are to be so equipped. Similar equipment on busses operated by the Yellow Bus Line and on trucks operated by the Patterson Transfer Company, parent concern, may follow.

The experimental car toured Memphis' business area and suburbs, and even went as far as West Memphis, Arkansas, 2-way communication being maintained despite such interference obstacles as downtown steel buildings and the tall steel superstructure of the Harahan bridge.

Conversation was as simple as picking up an ordinary telephone set mounted on the dashboard and talking into it. There was also a small loud-speaker, built into the dashboard.

Drivers will be required to take a simple examination prescribed by the FCC, which covers only government rules and regulations having to do with radio transmission and requires no technical knowledge.

AT a later date, it is possible that the cab company's radio system may be connected with the Southern Bell Telephone & Telegraph Company wires, thus permitting taxicab passengers to communicate with any telephone station in Memphis while riding.

Financial News and Comment

By OWEN ELY

December Earnings Figures Favorable

THE composite statement of sales, revenues, and income of privately owned class A and B electric utilities, recently published for December by the Federal Power Commission, shows a rather startling increase in net income—38.9 per cent for that month as compared with December, 1944. However, this was due to year-end tax adjustments, for December showed a tax *credit* of $2,031,000 compared with a charge of $28,573,000 in the previous year—a total saving of over $30,000,000.

The tax saving was, however, partially offset by an increase in "other income deductions," which were $29,094,000 compared with $7,530,000 in the previous year. This increase absorbed over $21,000,000 of the tax saving. Thus the increase in net income of about $18,000,000 was explained by changes in taxes and charge-offs to the net amount of about $9,000,000, the remaining $9,000,000 being accounted for by an increase of about $5,000,000 in income from sources other than electric operations, together with savings in interest and amortization.

The electric utilities in December showed a gain in revenues of about $12,000,000, or 4.4 per cent, while expenses (despite large savings in fuel) gained 7.4 per cent. Net operating revenues before depreciation and taxes showed a gain of about $2,000,000 over last year, but this was more than offset by an increase of 8.8 per cent in depreciation—some of which may have represented year-end amortization of war facilities. From an operating viewpoint, therefore, it may be said that the month worked out about even with the results for the year previous, despite a decline of 18 per cent in industrial kilowatt-hour sales. From that point on the results are so abnormal as to have little significance.

FOR the year 1945 as a whole net income showed a gain of 3.2 per cent despite a jump in "other income deductions" of over $26,000,000, or 45.8 per cent. It is obvious that results for early 1946, reflecting large tax savings, will be highly favorable. They may not be typical of normal future earnings, however, because increased costs and lowered rates will gradually eat into the tax savings. Fortunately very few utilities publish monthly figures, and the compilation issued by the Federal Power Commission does not usually get into the headlines. It is to be hoped that the stock market will not "celebrate" too vigorously such favorable figures as may be released in the next few months, for this might be followed by a letdown later on.

It is unfortunate that the electric utilities do not undertake, as a rule, cost studies on the various classes of service. Such studies might have revealed losses rather than profits, on much of the huge industrial load which resulted from munitions production. Under established rates (as well as under the threat of "renegotiation" based on over-all earnings), such business was handled as a rule at very low rates; on the other hand, furnishing this extra load of power strained the utilities to their utmost capacity at times, forcing overtime labor, heavy rerouting of power, and the use of very inefficient stand-by facilities. Los

of the business was probably a blessing in disguise.

Before the war the railroads, which make little pretense at cost accounting except as forced to do so by revised ICC accounting classifications, lost heavily on their passenger business. Utilities might well study their cost picture to see whether they are really earning a profit in all cases on their industrial loads. The industrial department is the most vulnerable to competition, and it may therefore, offer rates that are too low, even under favorable hydroelectric conditions.

Tax Savings in 1946 Not Yet Discounted Marketwise

THE investing public apparently still continues somewhat skeptical as to the earnings benefits which the electric utility companies may be allowed to retain in 1946 as a result of the abolition of excess profits taxes. The accompanying tabulation shows that the adjusted earnings (including estimated tax savings) are currently being capitalized marketwise at only about 12.8 times earnings, as compared with the market multiplier of 18.5 as applied to the published earnings figures.

Perhaps the answer lies in the fact that dividend rates are more important than earnings, in determining market values. Thus far there have been only two important dividend changes—Public Service of New Jersey has raised its quarterly rate from 20 cents to 25 cents and Public Service of Indiana from 25 cents to 45 cents.

It has of course been feared that the

PRICE-EARNINGS RATIOS FOR 26 UTILITY COMPANIES' STOCKS

Based on Earnings Adjusted for Estimated Tax Savings Under New Law

	Share Earnings			*3/25/46*	*Price-earnings Ratios*	
Company	*As Reported*	*Est. Tax Savings*	*Total Adj. Earnings*	*Price About*	*Reported Earnings*	*Adjusted Earnings*
Amer. G. & Electric*	$2.31	.50	$2.81	45	19.5	16.1
Black Hills P. & L.	1.90	.28	2.18	25	13.2	11.5
Boston Edison	2.06	.85	2.91	47	22.8	16.1
Central Arizona L. & P.	.84	.48	1.32	14	16.7	10.6
Central Hudson G. & E.	.48	.25	.73	12	25.0	16.5
Central Ill. E. & G.	1.79	1.33	3.12	28	15.7	9.0
Cleveland Elec. Illum.	1.95	.61	2.56	46	23.7	18.0
Commonwealth Edison	1.89	.49	2.38	35	19.7	14.7
Community Pub. Serv.	2.71	1.20	3.91	39	14.4	10.0
Conn. L. & P.	2.98	.96	3.94	68	22.8	17.3
Del. P. & L.	1.19	.46	1.65	25	21.0	15.2
Detroit Edison	1.25	.54**	1.79	27	21.6	15.1
Florida Power	1.49	.05	1.54	18	12.1	11.7
Idaho Power	2.92	.39	3.31	42	14.4	12.7
Indianapolis P. & L.	1.93	2.27	4.20	32	16.6	7.6
Missouri Utilities	1.28	.87	2.15	20	15.7	10.3
Mountain States Power	2.10	1.55	3.65	31	14.8	8.5
Pacific Gas & Elec.	2.16	2.16	4.32	45	20.9	10.5
Penn. Water & Power	5.07	.45	5.52	78	15.5	14.2
Phil. Electric	1.56	.63	2.19	30	19.2	13.7
Public Service of Ind.	2.23	2.70	4.93	43	19.3	8.7
Public Service of N. J.*	1.12	.80	1.92	26	23.3	13.6
San Diego G. & E.	.90	1.27	2.17	19	21.1	8.8
Sierra Pacific Power	1.59	.34	1.93	28	17.6	14.5
Southern Cal. Edison	1.64	2.65	4.29	37	22.7	8.6
United Illuminating	2.14	.28	2.42	49	22.9	20.3
Averages					18.5	12.8

* Holding companies, but the stocks are substantially in same market class as operating company stocks.

** Eighty-five per cent of the special customer refund ($6,000,000) is included.

state utility commissions would order sharp rate reductions. But thus far, except in the case of Commonwealth Edison and other companies in northern Illinois, no very severe reductions have come to the writer's attention. Indianapolis Power & Light has voluntarily reduced rates by about one-quarter of the amount of its excess profits tax payments ($750,000 per annum) effective June 1st, and this has been accepted by the Indiana commission, subject to negotiation of details. Thus the cut will be effective during only seven months of 1946 and (so far as the calendar year is concerned) will absorb only about $435,000 of the estimated $1,614,000 tax reduction, or a little over one-quarter of the theoretical saving. The governor (according to press reports) had suggested that *all* the potential savings be handed back to customers.

It now appears likely that the states will "go slow" in confiscating the utilities' tax savings, which are needed in most cases as a buffer against rising costs, to help restore dividends to prewar levels, and to revive the almost forgotten policy of equity financing.

Utility Analyses by Wall Street Firms

CENTRAL ILLINOIS ELECTRIC & GAS common stock was recently analyzed in a memorandum by Bear, Stearns & Co. The company's revenues and profits (before Federal income taxes) are said to have shown some increase in 1946. Last year's *pro forma* earnings (adjusted to reflect fully the refunding operations) were $1.93, to which could be added $1 in tax savings on the new 38 per cent basis. These earnings did not reflect any return on $1,000,000 new money raised last year through sale of preferred stock, although these funds are now rapidly being put to work. Substantial economies are anticipated through introduction of new generating units. The company also proposes conversion of gas operations in Rockford and Freeport to straight natural gas. Hence, Bear, Stearns & Co. estimates that after allowance for higher costs and likely rate cuts, the company could earn $2.25 to $2.50 a share. An increase in the $1.30 dividend rate would seem logical.

Residential rates are said to compare satisfactorily with those in other comparable cities, though further reductions appear likely. Plant acquisition adjustments amounting to $3,393,000 will probably be extinguished by application of $100,000 a year or 90 per cent of the balance of earnings over dividends, whichever is greater. Some increase in depreciation accruals is forecast in the study.

Washington Railway & Electric participating units were described in a 6-page analysis prepared by Amott, Baker & Co. Under the plan of dissolution each participating unit (representing one-fortieth of a share of stock) will receive one share of Potomac Electric Power and a fractional share of Capital Transit Company.

Potomac Electric Power has a long dividend record, averaging in recent years $1.20 a share. Capital Transit has paid an average of $1.80 since 1940. Potomac Electric Power is expected to continue the $1.20 dividend rate, which would afford a yield of about 5.6 per cent on Washington Railway & Electric (adjusting the price for a cash payment of $1.25, which must be paid on each unit). Amott, Baker believes that this is too high a yield for such a quality stock as Potomac Electric Power. When the exchange is effected, a yield of 4.8 per cent to 4 per cent would seem logical.

JOSEPHTHAL & Co. has recently issued a lengthy analysis of *Southwestern Public Service* common stock, reaching the following conclusion:

> Optimistic expectations of large earnings over the near term fail to reflect the possibilities of a decline in population of the service area due to the exodus of people connected with Army air fields and other temporary government installations. While the common stock at current levels of around 35 might have some attraction as a long-term speculation based on possible benefits from further development of the natural gas fields located in the company's territory, we

feel that earnings of $2 to $2.50 a share are the best that can be expected over the next year or so. Considering the readjustment problems and the undesirable service area which is heavily dependent upon one industry, we feel that numerous other issues offer better security as well as wider appreciation possibilities. We, therefore, advise switching into Sioux City Gas & Electric common stock as a means of reducing risks which, in our opinion, should be the primary consideration of investors at this time.

The same firm, in the March issue of their monthly utility review, commented at some length on American Water Works & Electric, Northern States Power, and United Corporation. With respect to the new *Water Works* plan, Truslow Hyde concludes that

> the plan falls far short of realizing the full potential value of the stock and, while it still appears to offer considerable attraction as a long-term holding, its near-term possibilities are limited by the failure of the plan to eliminate all the weaknesses in the capitalization.

Mr. Hyde also takes a rather pessimistic view regarding the possibilities for Commonwealth & Southern common stock. He considers that the various estimates recently made indicating a liquidating value of $7-$10 a share give undue weight to current tax adjustments, and do not take into account "the restrictions on utility earnings due to their monopolistic nature." He concludes that the stock is an unattractive speculation around 4, although the preferred stock has merit for income and moderate appreciation possibilities.

With respect to the *Northern States Power* integration plan, Mr. Hyde thinks that the Minnesota company's earnings should show a considerable improvement, due to substantial tax and refunding savings, over the 65 cents a share reported for the twelve months ended September 30, 1945. (He apparently does not give much weight to reports that the management will make a voluntary rate cut substantially offsetting the tax gains.) He therefore assumes a value of 16 for the new stock, or $131,000,000 for the 8,216,228 shares to be issued. He estimates that only $85,000,000 would be required to retire the preferred stock, allowing the latter only $100 (instead of the redemption value of $110) plus dividend arrears. This would leave a balance of $46,000,000 for the A and B stock which would work out at $110 for the A stock. This would be reduced by $20 a share if it were necessary to pay off the preferred at call price; and, if the price of 16 were considered excessive, it should be noted that a 10 per cent reduction would remove about $30 a share for the A stock. Hence he concludes that the A stock is liberally priced around 65, although the 6 per cent and 7 per cent preferred stocks appear attractive around 108 and 115, respectively.

The Josephthal review praises the management of *United Corporation* for its "realistic program" in the sale of substantial blocks of Commonwealth & Southern, Columbia Gas & Electric, and Consolidated Gas of Baltimore. The purpose of these sales was to provide a backlog of funds to exercise rights which the company may receive on various stocks in its portfolio, and for other purposes. The liquidating value of the common stock, based on portfolio adjustments during January and February and the United Gas Improvement proposed exchange, is estimated at $4.38 a share.

Potential Dangers of Low Money Rates

Since the business situation rarely reflects a balancing of factors as considered necessary by "classical" economists, we are always faced by problems and issues resulting from such lack of balance. At the present time we are worried about inflationary forces of one kind or another, just as in the middle 1930's we were concerned about deflation, technocracy, etc. The government deficit has been widely attacked as inflationary (in conjunction with commercial bank financing of bond emissions) but it has now achieved at least a temporary balance—an unexpected blessing for the administration—because of its overconservative

estimates of business activity and tax payments.

There has recently been increasing criticism of Washington's cheap money policy on the ground that it is inflationary even though it may help to keep the budget in balance. The recent decline in long-term money rates of about one-quarter per cent has led to numerous protests by representatives of institutions, and even the Federal Reserve System has indicated its doubts regarding the Treasury policy. (The subject was treated briefly in this department in the FORTNIGHTLY of February 28th, page 299.)

It is perhaps not generally taken into account that the institutions benefit by rising prices and bond redemptions, and that this capital appreciation serves as an offset to the diminished income from the same securities. However, once the trend of rising markets is ended and securities remain on a price plateau, this factor will no longer prove helpful. When the trend is reversed heavy book losses on the new securities may accumulate, while income will not improve until the present portfolio is replaced at maturity. It seems probable that recent heavy profits in institutional portfolios have tended to obscure the dangers of the future, when market losses will not immediately be offset by higher income.

BOSTON is the traditional center of conservatism, and the First National Bank of Boston in its recent *New England Letter* presented an interesting criticism of the cheap money policy. The bank points out that the country's "capitalists" include some 46,000,000 savings bank depositors, 71,000,000 life insurance policyholders, and an estimated 15,000,000 investors in securities. "Every property owner, investor, and saver has a proportionate stake in the continuation of our present economic system along with the large corporations and men of wealth," it adds.

The bank points out that since 1929 there has been a decline of 45 per cent in the yield of high-grade corporate bonds, 54 per cent in governments, and 61 per cent in dividend rates on savings bank deposits. As indicated in the accompanying chart reproduced from the letter, a widow left $150,000 in 1929 could have obtained an income in that year of $6,440, assuming that she placed equal amounts in governments, corporate bonds, and savings banks. After adjusting for the decline in yields, the higher cost of living, and larger Federal taxes, the income would now be only $2,370, a decline of 63 per cent (of which 53 per cent was accounted for by money rates). "The cheap money policy," the bank concludes, "is in reality a confiscation of income and is pauperizing an increasing proportion of our population. This in turn leads to a growing pressure for more and more old-age benefits and other forms of Federal aid."

During the war, under the pressure of patriotic propaganda, savings were huge despite declining money rates. Since the war the influx of savings bank deposits has continued heavy, though this has been offset to some extent by the cashing of E bonds. Is this recent trend an indication of our strongly ingrained savings habits (regardless of yield) or is it mainly because of the fact that consumer goods are still hard to buy? This phase of the question, not considered by the bank, might be interesting to explore.

THE bank feels that cheap money promotes inflation in that it discourages nonbanking investors from purchasing government securities, forcing into speculation the funds that should go into conservative channels. It is feared that commercial banks will continue to absorb substantial amounts of government bonds, aggravating the already inflated money supply. Thus the government will be forced to continue using the various controls for price fixing, regulating production, directing the use of credit, etc.—eventually perhaps taking over control of all economic and social activities.

The bank urges budget balancing as the main essential. Reduction in the government debt from surplus funds (in progress now in a modest way) would

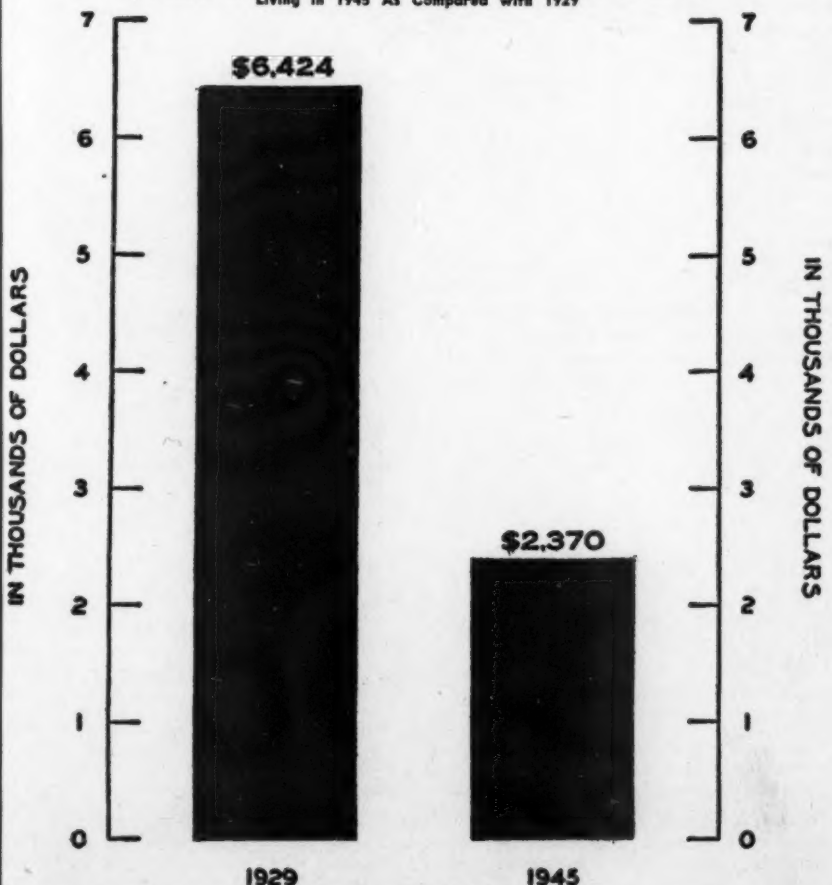
"do more than any other single factor to curb inflation and to restore public faith in Federal fiscal policies and in the future of private enterprise." With the restoration of confidence business would be encouraged to make long-term commitments (lacking in the 1930's) and money rates would harden.

While the bank letter may take a rather extreme view of the dangers ahead, we need more of such criticism in order to force the administration to moderate its extreme monetary policy. President Emil Schram of the New York Stock Exchange has proposed that a commission of outstanding men in government, finance, and industry be created to study the national debt policy.

DECLINE IN INVESTMENT INCOME

Based upon Investment of $150,000 in Equal Amounts in Government Bonds, Corporate Bonds, and in Savings Banks

Corrected for Federal Taxes in Both Years and for Rise in Cost of Living in 1945 As Compared with 1929



From the "New England Letter" of the First National Bank of Boston.

What Others Think

Hearings Resumed on Holding Company Act

THE subcommittee of the House Interstate and Foreign Commerce Committee resumed, in January, its hearings upon the Public Utility Holding Company Act of 1935. These hearings (previous sessions were reported upon in PUBLIC UTILITIES FORTNIGHTLY, issues of December 20, 1945, and January 17, 1946) were continued into February. Under the chairmanship of Representative Lyle H. Boren (Democrat, Oklahoma), the subcommittee heard testimony by the heads of utility holding companies, also by officials of certain Federal agencies and others.

It seemed apparent, as the hearings neared their close, that the committeemen were contemplating the recommendation of changes in punitive sections of the act, especially § 11. The suggestions of specific amendments presented by several witnesses brought out clearly the difficulties of operating under the present provisions. The testimony of Curtis E. Calder, board chairman of Electric Bond and Share Company, and of Justin R. Whiting, president of Commonwealth & Southern Corporation, on these matters obviously impressed the members of the committee.

Referring especially to the subject which has occupied much of the committee's attention—the acquisition of private utilities by public power bodies — Mr. Calder stated:

> . . . I wish to make it very plain that I believe in the free enterprise system. I do not believe that the legislators who passed the act intended to eliminate the utilities as a part of the free enterprise system. Nevertheless, in conjunction with the Federal Power Act and the tax laws, the Holding Company Act is serving to change the ownership of many utilities from tax-paying private enterprise to tax-exempt public power.
>
> I believe that the transfer of utility businesses from tax-paying private enterprise to tax-exempt public power is not in the public interest. The utility business in the United States was originated and developed through the initiative of private enterprise. It has reached a high level of efficiency without subsidy or special privilege. It has always paid heavy taxes, and otherwise has stood squarely on its own feet. Today it gives the best service at the lowest cost in the world. I believe that the best way to continue to render service at this high level and to continue to improve upon it is to leave it in the hands of tax-paying private enterprise.
>
> Every time an individual or a business fails to pay its share of the tax burden, the load they dodge is placed on the already heavily laden shoulders of the remaining tax-paying citizens. Public power fails to pay its share of taxes. Each time a tax-paying utility goes over to public power, its taxes are loaded onto someone else. Each time tax-free bonds are issued to finance the shift, some investor avoids his fair share of taxes by purchasing them. Why should you and I and other citizens pay more taxes so that public power may be exempt from taxes . . . ? . . . The process of breaking up the holding companies will be greatly accelerated in the near future. The resulting shift of public utility property from a tax-paying to a tax-exempt status will also be greatly accelerated unless prompt and adequate preventive measures are taken. What is happening may be legal but it is not fair and just. In addition, it is dangerous.

THEN, referring to the financing phase in these public power situations, this holding company executive made these suggestions:

> . . . Some of the financing which is accompanying the shift to public power is far out of the line prescribed by SEC for private enterprise. If Federal regulation of security issues is needed for the protection of investors, and I believe that it is, I think it should be extended to the public power field.
>
> My prescription for the correction of this situation is simple in principle, although the details of its application may be complicated. It is to remove the exemptions which now enable persons and enterprises to operate outside of the supervision of the SEC

and FPC, free from taxation under the Internal Revenue Act, and to enrich themselves thereby at the expense of the general tax-paying public. Special privilege should have no place in the American way of life.

Additional recommendations made by Mr. Calder were that private companies be permitted to maintain foreign utility systems exempt from provisions of the act; that they be permitted to engage in nonutility business, with only the utility operations subject to regulation; and that system companies should be permitted to charge affiliates prices for service at fair and reasonable margin above "bare-bones'" cost.

In closing his statement, Mr. Calder made these pertinent observations relative to the changed conditions since the passage of the act:

> I am a staunch advocate of regulation to protect the interests of investors and consumers. But the act was passed in an atmosphere which was not conducive to good regulation. The country had not yet emerged from the worst depression in its history. The speculative excesses of 1928 and 1929 had led to severe losses in market prices of utility securities as well as of other classes of securities. Rather than attributing these losses to speculation and to the desire of the participants to reap great and unwarranted speculative rewards and, in some cases, to unsound and misused holding company financial structures, the losses were attributed by many to the holding company principle. The result was that the legislation in many of its aspects was not constructive but punitive. Today, therefore, certain of the concepts on which the Holding Company Act was predicated have lost their significance through the passage of time or by reason of changed circumstances, and I feel reasonably sure that, if such legislation were before Congress at the present time, many of the restrictions now contained in the act would not be required in their present form.

JUSTIN R. WHITING, in opening his testimony, noted that two of the standards most often stated in the act are (a) "economical and efficient operation," and (b) "the public interest or the interest of investors and consumers"—the latter expression appearing some sixty times. He said:

> . . . These expressions are in a broad sense the principal objectives of the regulation contemplated by this act. However, the difficulty of applying such broad tests has, in the absence of more specific standards, led to the exercise of an unintended arbitrary power by the Securities and Exchange Commission. The act was not intended to destroy holding companies but to regulate them and, so regulated, to foster them in the public interest and the interest of investors and consumers. Yet, it has been so interpreted that in common opinion it spells the end of most holding companies, an opinion which may become fact unless this regulatory interpretation is checked. The law spells out a recognition of holding companies and looks to the approval of the holding company which has complied with its requirements. The question then is, after ten years' regulation, what changes should be made to best meet the objectives of the law?

As to changes which he considered should be made, after ten years of regulation, to meet the objections to the law, Mr. Whiting offered suggestions relative to three subjects covered by the act. His first subject for revision was referred to as definitions of "holding company" and "subsidiary company" as relating to persons owning less than 10 per cent of the voting securities. He said:

> Aside from those parts of the definitions which embrace persons controlling 10 per centum of the voting securities of such companies, §§ 2(a)(7)(B) and 2(a)(8)(B) authorize the commission to find any person to be a holding company or a subsidiary company, on the broad basis of influence over the management, even though stock interest be less than 10 per cent of the outstanding voting securities. As a result, no one wants to take that degree of interest in a holding company or an operating utility company which should go hand in hand with investor ownership. Everyone fears he will be declared to be a holding company or the corporation, a subsidiary company under the act, with all the regulations and restrictions that such status involves. As a consequence, also, large stock holdings have been reduced or are being liquidated, and the new ownership is broken up into small holdings. The tendency of this trend, as I see it, will be for holding companies, and operating companies as well, to be run by management bureaucracies which do not have the incentive and benefit of the viewpoint of investor owners. Thus true compliance with the standard "not detrimental to the interest of investors" is made more difficult, because a representative who has a vital reason for seeking economical and efficient operation is removed from the scene. I am not suggesting that the 10 per cent rule be disturbed.
>
> But I do believe it would be in the inter-

ests of all concerned, for the provisions of 2(a)(7)(B) and 2(a)(8)(B) to be eliminated. I believe the result would be that present and future owners of the business, who now fear to become active, will become sufficiently interested so that they will want to be represented on the boards of directors, to express their opinions, and to hold their securities through good and bad years with the idea of giving their best efforts to the building up of the business. So long as such activity might be looked upon as courting action by the commission to declare such a person a holding company, or the corporation a subsidiary company, we will not have the benefit of such ownership. In my judgment such type of ownership has a salutary effect in any business that is operated for profit.

His second point referred to the deterrent effect of "original costing" on the rearrangement of the nation's utilities on an economic and efficient basis. Regarding this, he said in part:

It is generally admitted that the holding companies had a profound influence on the development of the nation's utility industry. They led the way in constructing interconnecting lines and combining small properties and individual systems into integrated systems serving larger areas. . . . Without extensive interconnection and efficient operation, the production and distribution of the enormous amount of power needed for the war effort would not have been possible.

Commenting that § 30 of the act lays down the general pattern of what Congress intended the future groupings of utility systems to be, in its direction to SEC "to make studies and investigations of public utility companies, the territories served or which can be served," Mr. Whiting pointed out that, in attempting to carry out any orders of the commission for the rearrangement of properties, utility groups met delay because of the process involved in "original costing." He said:

. . . Section 208 (Part II of Title II) of the act provides for the filing with the Federal Power Commission, by utilities engaged in interstate commerce, of an inventory and statement of the original cost of all their property. Section 301 provides for the keeping of accounts, and under it the FPC has promulgated a classification of accounts, in which it defines original cost as "the cost of such property to the person first devoting it to public service." . . . The concept is fallacious as applied to an operating utility system (except for licensed projects) because its properties, not built under a particular license in the first place, have in part been acquired from former owners, reconstructed and modernized, assembled into larger groups, and made more efficient. They are not subject to recapture. The only way they could have been acquired was by paying to the previous owner more than his cost. This is the history of the progress of American industry. To require the new owner to carry on his books the original cost of a former owner, is to penalize the new owner. This progressive process, of putting together the properties that exist today, oftentimes goes back forty years or more; and this new application of original costing has resulted in wiping out substantial amounts of legitimate cost of going properties, with a consequent decrease in the value remaining.

As a practical means of overcoming the inequity in this particular phase of procedure under the act, the witness suggested:

My own idea is that the best answer to the enforced writing out of amounts in excess of the aboriginal cost is to give credit in such write-downs of acquisition adjustments, against taxable income; and I suggest that this committee make a formal request to the Ways and Means Committee to include such a provision in the next Revenue Act. The banks of the country are given such a deduction when they are required, by banking examiners, to write down the values at which they carry obligations or securities. I see no reason why utilities should not have the same right. If this were given, in my judgment, the cause of rearrangement and economical and efficient operation would be furthered. . . . Such original costing also has a direct effect upon the limited rates coming within the jurisdiction of the Federal Power Commission and consequently, by indirection, upon many state commissions. I think this committee would be well advised to propose an amendment which would place some kind of a curb upon the Federal Power Commission in fixing rates that are based upon a net original cost base. Any regulation so based, which ignores the changing value of the dollar, prudent investment, and present fair value, in my judgment, will have a detrimental effect upon the marketing of utility securities when other industries are not so limited, and thus result in retarding the future growth of the utility industry.

The third point referred to by Mr. Whiting had to do with the clarification of the provisions of the act relating to integrated public utility systems. With

respect to this, he dwelt in some detail upon the advantages to the properties of the Commonwealth & Southern, situated in a group of neighboring southern states, of common stock ownership by the parent holding company for twenty years, and also the benefits to both city and rural customers which are served by the extensive transmission systems interconnecting both steam- and hydro-generating plants.

The effect of this coördination, under common stock ownership, it was declared, is to operate the entire power system as though it were a single unit. By pooling the operation under common ownership, advantages are gained and savings effected which would not be practical among companies independently owned.

In suggesting an amendment to the act so as to permit the continued operation of such a group of properties as an integrated system, Mr. Whiting expressed the view that "if the interests of the public and the consumers are considered, and, certainly, if the investors' interests are to be protected, the system should not be broken up."

EDWARD L. SHEA, president of the North American Company, in his testimony, brought out that the problems in connection with the act, which so vitally affects our national economy, seem to be due to the indefiniteness of some provisions, and the unduly restrictive character of other provisions. He named three points which, he said, could be adopted within the structure of the act:

1. Clarification and broadening of the basic provisions of the act governing the retention by a holding company of an electric utility system in addition to its so-called principal system.

2. Specific permission for retention of a gas business by a company also engaged in the electric business, and for retention by a holding company of control of a gas company which operates in the same area or in an area adjacent to that in which an electric company controlled by the same holding company operates.

3. Clarification of and greater latitude in the provisions relating to retention of existing investments not directly associated with public utility operations, and acquisition by a holding company of investments of such character.

On the adoption of points two and three, he said: "This would accelerate further interconnection of physical properties and make for both efficiency and economy, all tending toward further reductions in rates and increasing ability to meet, at lower cost, the utility industry's continual need of raising substantial amounts of capital."

Referring to the great current need to increase employment and strengthen our national economy, he deplored the trend which forces utility holding companies to contract materially all their operations and to liquidate and distribute their capital. While much of utility capital is thus demobilized, he explained, present administration of the act restricts the use of remaining capital to a degree which makes practically impossible the investment of funds in nonutility businesses. He pointed out that the fundamental soundness of diversity of investment has long been recognized. He proposed, therefore, that holding companies be permitted to retain and acquire investments in nonutility businesses unless it is specifically shown that such ownership interferes with the effective functioning of the public utility properties retained.

EARLE S. THOMPSON, president, American Water Works & Electric Company, Inc., in his testimony followed, in general, the views expressed by other holding company executives as to the desirability of certain changes being made in the Holding Company Act. He emphasized the importance of providing that the division of regulatory authority between the states and the Federal government gives each exclusive jurisdiction over the particular matters in which it has the natural and dominant interest. The line of division should be drawn so as to avoid dual and multiple regulation of the same transactions and the confusion, waste, expense, and delay that inevitably result therefrom. He pointed out that Federal regulation is so

"YOU HAVE A RULE AGAINST 'FOREIGN ATTACHMENTS,' DON'T YOU? OKAY, THEN, REMOVE MY MOTHER-IN-LAW, SHE'S TIED UP THAT PHONE FOR TWO DAYS"

broad in scope that the same transactions are generally subject to regulation by the states and the Federal government and, sometimes, to regulation by more than one Federal agency. He said it sometimes seemed that compliance with the many dual and multiple regulatory requirements was his company's chief occupation. He stated that this was not in the best interest of the public or security holders. He cited examples of operations which were relatively simple except from the standpoint of complying with regulations.

Mr. Thompson submitted certain specific amendments to the Holding Company Act, the Federal Power Act, and the Federal Natural Gas Act, for the House subcommittee's consideration.

Among others who appeared before this committee, relative to the Holding Company Act, were Clayton J. Kline, general counsel, North American Light & Power Company, and Glen V. Rork, president, Northern States Power Company of Wisconsin, who referred especially to problems confronting their companies in complying with some of the provisions of the act. Also, Preston S. Arkwright, board chairman, Georgia Power Company, and James M. Barry, vice president and general manager, Alabama Power Company, who made statements setting forth the advantages to each of those operating utility companies of common stock ownership by

Commonwealth & Southern Corporation, a holding company.

The committee again considered the question of the acquisitions of private utilities by public power bodies, especially with respect to the Omaha electric situation. Testimony was presented by H. S. Aller, president, American Power & Light Company, which has sold its common stock holdings in Nebraska Power Company to a "nonprofit" group or public power body. The transaction was negotiated by Guy C. Myers, a financial agent, who also testified, especially regarding his fees in connection with the deal, which he averred were modest, in view of the time and details involved in the negotiations. Mr. Myers was questioned by Committee Chairman Boren regarding reported plans of a group of Pacific Northwest public utility districts to acquire the properties of Puget Sound Power & Light Company. Mr. Boren maintained that in such a transaction it was wrong for the local district's revenue bond income to be tax exempt while income on U. S. government bonds, except those designed for the smallest investors, was taxable.

RECALLED for further testimony, at the request of the committee (to supplement his statement at a previous hearing), Kinsey Robinson, president, Washington Water Power Company, presented detailed data relative to the acquisition of private utilities by public bodies. To demonstrate the advantages possessed by these public bodies, through their tax-avoidance immunity, enabling them to offer higher purchase prices for private utility operating properties (divested under SEC orders) than can be paid by tax-paying private interests, Mr. Robinson filed with the committee a chart illustrating the procedure in such a transaction.

Setting out a hypothetical situation as the base of this illustration, the chart portrayed, step by step, the controlling factors involved, where such a purchase was under consideration. This was pictured in graphic form, by parallel statements, contrasting the position of a private prospective purchaser with that of a public body in such a negotiation. The obvious advantages held by the public body were clearly shown. An important reason for this advantage lies in the ability of the public body to finance the purchase by the sale of tax-free revenue bonds, enabling it to pay a much higher price for the utility property than is possible for the private interests.

It was evident from their comments that committee members were much interested and impressed by the information thus disclosed.

Pursuing other angles of this public power matter, the committee questioned closely Bonneville Power Administrator Paul J. Raver as to his negotiations in 1944 to buy the Puget Sound properties. Mr. Raver stated that he represented several public utility districts, the city of Seattle, and the Bonneville Power Administration in offering $90,000,000 for the property. Upon searching queries by committee members, the witness said that the Bonneville agency was authorized to enter such negotiations by the provisions of the Bonneville Act requiring the agency to supply cheap power to "the little man." Mr. Raver contended that it is possible to serve "the little man only through public ownership of power plants."

AT these hearings the Federal Power Act, and also the procedures and policies of the Federal Power Commission in administering it, came up for attention. FPC Chairman Leland Olds, in his testimony, expressed himself as favoring public ownership of utilities, and his views met frequent challenge by committee members. He defended the public ownership movement by insisting that utility operations are merely "entrusted" to private enterprise by "option" of the governmental agencies in the areas served.

As to this viewpoint, Chairman Boren protested that the private enterprise system is the established method of operation, and that only through a mandate of the public should governmental agencies take over such properties. The conten-

tion also was made by Mr. Olds that private companies attempt to influence public opinion against public power encroachment. This statement brought criticism of his own speeches, in behalf of public power, by Congressmen O'Hara (Republican, Minnesota) and Hinshaw (Republican, California).

On the question of tax inequalities between private and public utilities, Mr. Olds made the unexpected suggestion that taxes might be "equalized" by reducing those of private companies. While admitting the handicap such inequalities place upon private utilities, he insisted that the solution did not lay in taxing public bodies correspondingly. He asserted that any tax reduction for private companies must result in their lowering their rates. By no means, he declared, should tax reductions be permitted to result in any unearned "windfall to the utilities and their common stockholders."

Following FPC Chairman Olds, several witnesses—executives of utility operating companies, and others—submitted testimony bearing especially upon the difficulties of conducting their affairs under the Federal Power Act, as interpreted and administered by the commission, and suggested amendments so as to remove certain ambiguities.

C. Hamilton Moses, president, Arkansas Power & Light Company, citing specific experiences in his company's relations with the Federal Power Commission, was sharply critical of Chairman Olds because of his bias and prejudice against private utilities and his favoritism for public ownership.

Referring to the Federal Power Act, Mr. Moses quoted § 313 (b)—"the findings of the commission as to facts, if supported by substantial evidence, shall be conclusive." He called this iniquitous beyond a possibility of justification, because it led to a practical denial of any appeal from the commission except as to naked questions of law.

SAMUEL FERGUSON, president, Hartford (Connecticut) Electric Light Company, urged upon the committee such amendment to the Federal Power Act as would free his strictly intrastate company, and others like it, from a jurisdiction by FPC never intended by Congress. The history of the administration of the Federal Power Act, he said, was a good example of how the proposed intention of Congress may be substantially altered in the process of interpretation. He introduced for the record a chart which traced the metamorphosis of this law governing electric utilities in this country.

Mr. Ferguson then touched upon the philosophy which decrees the "fixing of rates that are based upon a net original cost base." This, he declared, exposes all utility investors to diminishing returns coincident to the growth of the depreciation reserves whenever the size exceeds the company's ability to invest same in plant extensions.

In the past, he pointed out, the rapid expansion of business has concealed this situation, but, in spite of the present stage of approaching maturity, this sort of philosophy calls for larger and larger reserves, as well as deduction from original cost in the determination of permitted earnings.

Mr. Ferguson saw in this procedure the destruction of the credit of all private utilities and, in addition, it would require that present users would be penalized by higher than necessary charges for the possible benefit of future customers.

The belief was expressed by Mr. Ferguson that this "net original cost base" practice (sometimes referred to as "aboriginal cost"), though not so obvious in its effects, was probably the most effective means employed by public ownership bureaucrats to bring about the socialization of all utilities in the country.

THE obvious and urgent need of amendment to the Federal Power Act was also advocated by Gay H. Brown, formerly chief counsel for the New York Public Service Commission. He made the following statement:

> While the Federal Power Commission has for years expressed great solicitude for the

state commissions, and has given lip service to the ideal of nonusurpation of state jurisdiction, yet by its actions it has demonstrated, in my opinion, its purpose to invade and supersede state jurisdiction whenever it deemed it expedient so to do. Beginning at a time shortly after the passage of Parts II and III of the Federal Power Act of 1935, this commission has persistently and continuously adopted an attitude and position directly contrary and wholly at variance with the position which it took at the time of the congressional hearings upon the bill to amend the act.

Mr. Brown then sketched the history of various Senate and House committee hearings in past years to consider amendments to the act. But, he noted, despite its assurances at that time that the proposed bill in no way invaded the jurisdiction of the states, the commission, "apparently actuated by the thought that only the Federal Power Commission was qualified to exercise jurisdiction over electric utilities of the country," proceeded with just such invasions.

Various instances where the commission succeeded in carrying through this invading policy were cited by Mr. Brown. He then outlined the story of the Connecticut Light & Power Company Case, with which he was intimately familiar, having argued the case before the U. S. Supreme Court. That court reversed the judgment of the U. S. Court of Appeals, which had affirmed the decision of the Federal Power Commission.

In closing his testimony, Mr. Brown commented upon a letter—signed by Chairman Leland Olds and three of the commissioners—sent in 1943 by the Federal Power Commission to the executive committee of the National Association of Railroad and Utilities Commissioners. In this letter the state commissions, because of the fact that they filed briefs with the court in opposition to FPC in the Hartford and Jersey Central cases, are accused of being "allies of the utilities," and said utilities are described as "powerful and ruthless utility systems" and "recalcitrant exploiters of the public service."

As one more illustration of this attitude, Mr. Brown noted that Chairman Olds, in a speech before the first annual meeting of the National Rural Electric Coöperative Association on January 20, 1943, and referring to the advertising campaign of the utilities undertaken to enlighten the American people as to the advantages of private ownership, said: "What have we to oppose to this malign campaign, the last stand of the devil of self-interest against the great upswing of the common interest?"

Mr. Brown made the further statement that if a man on a soap box gave voice to some of these thoughts, might we not characterize the utterances as demagogic. What shall we say when the statements are made by the chairman of the Federal Power Commission?

With the ending of this series of these hearings, the testimony of representatives of the utility industry was concluded. Chairman Boren stated that the date of the next hearing had been set for March 25th, for the further testimony of SEC Chairman Purcell.

—R. S. C.

Utilities Sponsor Research to Develop Use of Heat Pump

Winter heating and summer cooling from the same equipment is the goal of electric utilities and certain makers of electrical equipment. To assist in speeding the perfection of such equipment, the Southeastern Electric Exchange, an association of business-managed electric utility companies, has established a research project at the Southern Research Institute, Birmingham, Alabama, to explore the possibilities in this field, based on the application of the principles of the heat pump.

In announcing this step, J. M. Barry, vice president and general manager of Alabama Power Company, which is a

member of Southeastern Electric Exchange, said:

> The idea of using a heat pump for heating buildings is not new. It dates back to 1852 when Lord Kelvin proposed the idea of heating with a "warming engine." Technically, there is nothing wrong with his idea. However, equipment necessary to make the warming engine competitive with other methods of heating had not been developed to that point.

Within the past few years, articles in various publications have speculated on the use of the heat pump as a possible means of cooling and heating homes electrically. The use of heat pumps in homes is not new because every electric refrigerator is operated by a miniature heat pump. Make a heat pump large enough and a room, home, or building can be cooled similarly.

WHEN heat taken from the inside of the house is pumped to the outside air, the heat pump is being operated on the "cooling cycle." This system is that currently used in many summer cooling installations. If the procedure is reversed and the heat taken from the outside air and pumped into the home, the heat pump would be operating on the "heating cycle." It should be remembered that, no matter how cool the weather, it can become colder and that, therefore, there is always some heat available in the outside air.

The use of the heat pump for summer air conditioning is already established. The problem is the reversal of the process to permit winter heating with the same equipment. What is needed now is the adaptation of the heat pump to heating as well as to cooling, the development of suitable controls for it, and modifications to improve its efficiency so that the price of the equipment and the cost of operation will not be excessive.

Experimental units are already in use in office buildings in scattered locations in the United States. The experience of electric utility companies with these large-scale installations prompts the investigation of the possible use of similar units of smaller size for the home. The area covered by the power companies in the Southeastern Exchange is an ideal one for application of the heat pump for summer cooling and winter heating because of the moderate heating and cooling requirements. The research project, as established at the Southern Research Institute by electric utilities, is, therefore, of considerable significance to southerners.

Mr. Barry emphasizes that the utilities do not propose to engage in the manufacture of electric heat pumps and that the establishment of the research project at the Southern Research Institute is to assist in crystallizing thinking on the subject so as to speed its development and distribution to the public. The facts determined from the research project will be made generally available to manufacturers and to other interested persons.

DR. W. A. LAZIER, director of the Southern Research Institute, announced that the utility-sponsored heat pump project will be under the direction of Dr. E. N. Kemler, head of the institute's engineering research division. Dr. Kemler was professor of mechanical engineering at Purdue University before joining the institute's staff, and has acted as engineering consultant for various manufacturing concerns.

¶ *". . . the government can make the load easier to bear if it exercises prudence and thrift in its own domain and if it keeps a constant alert against increasing expenditures. Unless it does, the cost of government might reach a point where it would act as a brake on individual initiative and progress and thus become a threat to national economic stability and well-being."*

—EXCERPT *from study by life insurance companies in America.*

The March of Events

Pike Resigns from SEC

IN a 4-line letter, Sumner T. Pike of Maine has resigned as a commissioner of the Securities and Exchange Commission.

"I am getting stale on this job, and it is time for me to quit," he told President Truman in the letter.

The President accepted the resignation, but refused to "accept the thesis which you put forward with such Yankee terseness."

On the contrary, Mr. Truman said that he could not believe that Mr. Pike was "getting stale." The Chief Executive felt that the "public will be the loser" in Mr. Pike's decision to retire after six years' service.

It is also rumored that SEC Chairman Ganson Purcell has handed in his resignation. It is expected that he will return to Washington to practice law. He has maintained his home in the District since SEC was moved to Philadelphia four years ago.

Court Denies Petition

THE Fifth Federal Circuit Court of Appeals on March 22nd denied a petition by the Arkansas Natural Gas Corporation seeking modification of its subsidiaries except the Arkansas Louisiana Gas Company. The order was issued by the Securities and Exchange Commission May 5, 1944.

The gas company was described as a distributor of natural gas at retail through 103 distribution plants in east Texas, north Louisiana, and Arkansas.

The corporation asked that the order be modified for the following reasons:

1. Because the commission declined to say whether it allowed the gas-producing and transmission facilities of Arkansas Louisiana Gas Company to be retained in the system because they are a part of the integrated system, or as "other businesses" permitted by the Public Utility Holding Company Act of 1935.

2. Because the oil businesses of the other subsidiaries are not also allowed to be retained.

"We think the gas wells and pipe lines are not necessarily a part of this integrated system, though they were proper to be retained as other businesses, reasonably incidental and economically appropriate to the operation of the system," the court said.

Written by Judge Samuel H. Sibley, the opinion had the concurrence of Judges Edwin R. Holmes and Leon McCord.

FPC Dismisses Application

THE Federal Power Commission on March 15th announced its order dismissing without prejudice Panhandle Eastern Pipe Line Company's application for authority to construct facilities for sale of natural gas to the Ford Motor Company and stating in an opinion (No. 130) that such sale would impair gas service to Panhandle's present customers and is against the public interest.

The application so dismissed covered a request filed by Panhandle on January 10, 1946, to construct and operate certain necessary facilities at a point of connection on Panhandle's main transmission pipe line in Wayne county, Michigan, for delivery of gas to the Ford Motor Company.

Favors Daylight Saving

PRESIDENT Truman told a press conference last month that if Congress again called for national daylight-saving time he would support it.

He was asked if he would support daylight saving as an aid to the food situation, apparently on the theory that the general public might have more time for after hours home gardening.

The President said he would not support a piecemeal return to daylight saving, but would support it if applied nationally and if it were approved by Congress.

SEC Approves Group Plan

THE Securities and Exchange Commission last month approved the reorganization plan filed voluntarily by New England Power Association and its subholding companies—Massachusetts Power & Light Associates, North Boston Lighting Properties, Rhode Island Public Service Company, Massachusetts Utilities Associates common voting trust, and Massachusetts Utilities Associates.

The plan provides for the termination of the common voting trust and the substitution of a single holding company, to be known as New England Electric System, for New England and its subsidiaries, which operate elec-

tric and gas public utility companies in Vermont, New Hampshire, Massachusetts, Rhode Island, and a section of Connecticut.

Seeks to Purchase "Big Inch"

THE Federal Power Commission on March 18th disclosed that the Trans-Continental Gas Pipe Line Company of Longview, Texas, had offered $40,000,000 for three great pipe lines built by the government to move gasoline and oil during the war.

The FPC said Trans-Continental also proposed to spend another $40,000,000 to convert the three pipe lines, the "Big Inch," "Little Inch," and "Southwest Emergency," to transportation of natural gas to Pennsylvania, New Jersey, and New York. Total cost to the government of the three lines approximated $152,000,000, the FPC said.

Trans-Continental, the FPC reported, said its $40,000,000 purchase offer was made to the War Assets Corporation. The FPC described Trans-Continental as a "recently organized" Texas corporation. WAC said Trans-Continental's offer was one of several which are under consideration.

In addition, Trans-Continental has applied to the FPC for authority to convert and use the lines for natural gas transportation if the War Assets Corporation will sell, or, if it is unable to buy them, to construct two Texas-to-New Jersey lines at a cost totaling $160,000,000.

The first of these proposed alternative lines, the FPC said, would cost $80,000,000 and approximate the route of the Big Inch line, a 1,340-mile line extending from Longview to Linden, New Jersey.

The second proposed alternative line, the FPC said, would also be a 26-inch pipe which would "loop the original line" and cost $80,000,000. The company, FPC said, spoke of constructing it "later as the market develops in the eastern area."

The FPC said Trans-Continental's application stated the gas it proposes to move east would be obtained from reserves in Harleton, Panola, Jefferson, and south and southwest Texas oil fields.

The company was said to have options for the purchase of 200,000 cubic feet of natural gas daily and was negotiating for options on the purchase of additional gas sufficient to supply the maximum capacity of the line for thirty years.

FPC to Investigate Atomic Power

REPRESENTATIVE Franck R. Havenner, Democrat of California, introduced in the House on March 18th, House Joint Resolution No. 326, described in the *Congressional Record* as a "joint resolution directing the Federal Power Commission to inquire into and report to the Congress on various matters with respect to atomic energy for nonmilitary use and purposes of peace."

SEC Actions

IN a supplemental order the Securities and Exchange Commission on March 19th approved the Crescent Public Service Company's proposal to sell all the outstanding securities of the Empire Southern Service Company to the Empire Southern Gas Company for $410,000 plus closing adjustments.

It also released jurisdiction over the transaction and denied the intervention petition of Don R. Zachry, who claimed competitive conditions had not been maintained with respect to the proposed sale.

With the acquisition, Empire Service will be merged into Empire Gas.

To facilitate its dissolution program, the National Power & Light Company filed an amended plan which provides for capital adjustment of the Memphis Generating Company and the subsequent distribution by National of its interests in Memphis to its common stockholders. National proposes also to acquire from Memphis all common stock of the Memphis Street Railway Company now held by Memphis and to distribute these shares to its own stockholders.

The Buffalo Niagara Electric Corporation, a statutory subsidiary of the Niagara Hudson Power Company, asked the SEC for authority to merge into it the Hydraulic Race Company and the Lower Niagara River Power & Water Company.

Elimination of these subsidiaries, it stated, will simplify the corporate structure of the holding company systems of Buffalo Niagara and Niagara Hudson.

The commission ordered a hearing held on April 9th in connection with two plans filed by the American Water Works & Electric Company, Inc., to complete compliance with provisions of the Holding Company Act.

Alabama

Vote Streetcar Strike

BIRMINGHAM'S streetcar motormen, conductors, and bus operators voted last month, 767 to 28, in favor of a strike. Meanwhile, efforts went forward on several fronts to avert a tie-up of the city's public transportation system in a dispute over a new wage agreement.

William M. Rogers, president of the Birmingham Electric Company, said the company had proposed to raise the present scale of 87 cents an hour and 3 cents bonus to a straight 95 cents with continuation of the 3-cent bonus.

This, the company said, would be equivalent to a 35.2 per cent raise over the scale in 1941.

Mr. Rogers said the company has had a contract with the Amalgamated Association of Street, Electric Railway, and Motor Coach Employees (AFL) for more than thirty years, and that negotiations have always been conducted in a spirit of good will and mutual confidence, and expressed the belief the present differences can be settled in the same manner.

Arkansas

To Install Natural Gas System

A FRANCHISE for a natural gas distribution system in Harrison has been granted to the Arkansas Western Gas Company, with headquarters at Fayetteville, it was announced recently.

Mayor E. T. Parker had been negotiating with the company for some time to obtain natural gas for Harrison.

L. L. Baxter, company president, told the city council: "Our company is proceeding with plans to bring natural gas to this section as soon as possible, but it should not be anticipated that the job can be done immediately. The critical shortage of pipe-line equipment and other materials makes it impossible to predict any certain completion date."

Application under Advisement

APPLICATION of the Arkansas-Missouri Power Corporation of Blytheville for authority to serve an area adjacent to Leachville, Mississippi county, previously allocated to the Mississippi County Electric Coöperative Corporation, was taken under advisement by the state public service commission following a hearing last month. The applicant was seeking permission to construct 7 miles of lines to serve 27 customers at an estimated construction cost of $7,700.

The protesting coöperative testified it had nearly completed construction of similar lines in that area.

Municipal Plant Buys Power

BECAUSE delivery of additional equipment for the Bentonville municipal light and power plant cannot be assured for many months, the city council has made an emergency contract with the Southwest Gas & Electric Company of Shreveport to furnish electricity for five years for distribution over city lines. Current will be delivered to the plant at a wholesale rate, depending on the amount used.

Bentonville has owned and operated its plant many years, and it will be kept in readiness for any emergency.

California

City Orders Dim-out

A DIM-OUT of street lights was ordered last month by Utilities Manager James H. Turner to conserve the existing supply of lamps.

Turner said strike conditions prevailing since January 2nd in both the General Electric Company and Westinghouse Electric Corporation plants had caused a serious shortage in lamps for replacements.

"Our present requirements," he said, "amount to 5,600 lamps per month. There is less than one week's supply available, with no promise of future delivery."

Turner ordered the following curtailment:

Reduce lamp voltage 3 per cent, which will produce 90 per cent of the light but will lengthen the lamp life 154 per cent.

All lights will be dimmed further after midnight.

Stop replacing burned out lamps except at intersections.

Turn lights off one hour earlier every morning; this will add an additional 10 per cent to the life of the lamps.

Georgia

Plans to Abolish Fare Contract

CONFERENCES between officials of the Georgia Power Company and the Decatur city council have resulted in the council authorizing the company to confer with Decatur City Manager Frank Newman, or a committee of council, to work out a proposal whereby the

old 5-cent car fare contract can be abolished and better streetcar service be inaugurated.

Scott Candler, DeKalb commissioner, at a meeting of the council declared Decatur's transportation system today is of the 1903 vintage, the year when the 5-cent fare contract went into effect. He expressed the opinion the present transportation facilities were handicapping the growth of Decatur, and urged the council to do something to improve conditions.

Members of the council suggested that if they abolish the old 5-cent fare system, then the company should pay into Decatur's line's gross receipts, just as it does in Atlanta, and that it also pay Decatur on an annual basis for the wear and tear on the streets.

Illinois

Court Sets Sale Procedure

FEDERAL Judge Michael L. Igoe last month authorized the procedure under which most of the 40,000 investors in the Chicago Surface Lines and Chicago Rapid Transit Company will vote to accept or reject the purchase offer of the Chicago Metropolitan Transit Authority for their properties.

The plan provided for mailing by March 31st by the trustees of each system of ballots and explanatory material. The voters must return their ballots to trustees on or before May 1st. On May 15th trustees will report to the court on the results.

Two-thirds of the investment in each participating group must be favorable to acceptance and nonvoting creditors will be counted as opposing the sale.

Judge Igoe subsequently declared an increase in surface lines' fares was imperative if wage increases are to be granted to 12,000 employees, in approving an arbitration agreement between the surface lines' board of management and the union.

The agreement, which is binding on both the company and the union, came after officials of the surface lines and Division 241 of the Amalgamated Association of Street, Electric Railway, and Motor Coach Employees (AFL) were unable to settle union demands for a 21-cent hourly wage boost.

Company attorneys informed the court that net income after operating expenses for the fiscal year ending January 31, 1946, was $4,000,000, and that union demands would increase the company's annual labor costs by $8,500,000.

Declaring that it was "highly important" that all parties concerned participate in devising plans for obtaining additional revenue, Judge Igoe directed that Mayor Kelly, Governor Green, trustees of the lines, and bondholders' committees submit suggestions to the court within fifteen days.

"If it be political or not," Judge Igoe said, "in plain language somebody must ask for an increase of fares in order to increase the revenue-producing factors of the property."

Ruling Given on Appeal

ANOTHER ruling in favor of a 12-cent fare on Chicago elevated lines was issued on March 20th by the Illinios Supreme Court, but William H. Sexton, city traction attorney, said he would confer with the office of Attorney General Barrett to "take whatever legal steps can be taken" to keep the present 10-cent fare in effect.

The higher court's opinion was in line with a ruling last May in a mandamus case, difficult to appeal, brought by the elevated lines in an effort to force Judge Philip J. Finnegan of the circuit court to order the state commerce commission to increase the fare at once.

"The language of our (previous) opinion does not contemplate a retrial on any issue nor the taking of any further evidence but merely the entry of a decree," the supreme court said.

Started in 1941, the 12-cent fare case was based on the contention that the elevated lines were unable to meet operating expenses. When state, city, and OPA attorneys argued that wartime revenues have changed the situation, Judge Finnegan referred the case to a master in chancery for new evidence concerning income and expenses.

While attorneys took time to study the ruling, the trustees of the elevated lines issued a statement pointing out that operating costs will be greatly increased if its employees win a wage boost, a matter now being negotiated.

Indiana

Utility Reduces Rates

THE Northern Indiana Public Service Company on March 15th announced a new schedule of rates, effective May 1st, which will save electric power and natural gas users approximately $550,000 annually.

The announcement was made through Sam Busby, secretary of the state public service commission.

Under the rate plans, consumers in the area served by the Northern Indiana Company will save annually approximately $339,000 on electric power each year. The savings will be on commercial, residential, and block power rates.

In addition, the company has advanced a proposal for new contracts on street lighting, also approved by the commission, in which cities in the area will save $96,500 in their annual light bills.

The company also has instituted decreases in natural gas charges amounting to $125,781 yearly in the Ft. Wayne division. The cuts in rates resulted from a lower schedule of charges for wholesale gas from the Panhandle Eastern Pipe Line Company, which supplies the gas to the Northern Indiana utility.

Mr. Busby said that, with the current reductions, rates of the Northern Indiana Company have been lowered $654,330 since January 1st. Previously, residential and commercial rates in Laporte and Michigan City had been cut $92,739 annually.

This reduction was said to be the latest in a series of utility rate slashes resulting from the repeal of the Federal excess profits tax January 1st. Other companies which have cut rates include the Indianapolis Power & Light Company, $750,000; Public Service Company of Indiana, $1,100,000; and the Indiana Service Company of Ft. Wayne, $175,000.

In addition, the Southeastern Indiana Power Company lowered its rates $30,000, effective February 1st.

Kentucky

Transit Service Normal

OPERATIONS of the Louisville Railway Company, crippled since March 8th by a strike called by the CIO Transport Workers Union, were back to normal on March 14th following an agreement to settle the walkout.

A meeting of company officials and union representatives was called to settle final details of an election to determine which of the two unions is favored as a bargaining agent.

Commission Choices Confirmed

THE state senate last month unanimously confirmed on a voice vote Governor Simeon Willis' appointment of two Republicans and a Democrat to the state public service commission after a stormy session of the senate rules committee.

The appointees are Senator Cass R. Walden, Edmonton Republican, for a 4-year term; Charles M. Whittle, Brownsville Republican, for a 3-year term; and Jesse K. Lewis, Grayson Democrat, for a 2-year term.

Because of Lewis' long association with former attorney general Hubert Meredith, many senate Democrats opposed confirming his appointment to the $5,000-a-year state commission post, it was reported. Meredith bolted party lines to support Republican candidates in the 1944 campaign.

Nebraska

Interveners' Petitions Denied

THE Federal Power Commission recently announced its order denying petitions for rehearing filed by interveners in the proceedings of Nebraska Power Company's application for permission to issue $7,000,000 of securities. The original application was dismissed for lack of jurisdiction by FPC's order of January 24, 1946.

In the present order the commission also denied Nebraska Power Company's motion for findings that the interveners are not aggrieved. On March 11th the commission, sitting *en banc*, heard oral argument on the petitions for rehearing and motion.

Ohio

Can Tax Transit Systems

ALL Ohio city-owned utilities except transit systems are exempt from real and personal property taxes, State Tax Commissioner C. Emory Glander ruled on March 19th.

The ruling is based, he said, on a section of late 19th century Ohio law that exempts "works, machinery, pipe lines, and fixtures belonging to a city or village and used exclusively for conveying water to it or for heating and lighting it."

An Ohio Supreme Court decision last June 6th held the Cleveland Street Railway taxable but, in that case, Glander declared, the court failed to consider the 19th century Ohio state statute.

"Hence the law's continuing validity is to be

presumed," he said. "Until it is judicially determined that the statute is invalid, it is the duty of the tax commissioner to observe its provisions."

The supreme court transit decision last year touched off considerable speculation on whether county auditors could place any publicly owned utility on the tax duplicate.

Oregon

Court Sets Hearing

JUDGE J. A. Fee of the Federal District Court recently set a hearing for April 16th on the possible sale of Portland Electric Power Company's assets.

At a hearing on March 11th Judge Fee refused to consider any offers to buy either the company's interurban lines or the Portland Traction Company subsidiary, which operates in Portland. He ruled that any new offers or modifications of present offers must be filed with the court by April 7th.

Two offers already had been made for the subsidiaries, one by Manning Transportation Corporation, made up of officials of Pacific City Lines, Oakland, California. This offer amounted to $7,100,000 and provided that the corporation assume all taxes. A previous offer of Portland Transit Company, made up of San Francisco individuals, called for payment of $7,500,000, but contained clauses which would indemnify the company for taxes.

Judge Fee had stated that the court "never will pass on any tax contingencies. People who buy will have to take care of that." Meanwhile he set March 27th for a hearing on any exceptions to the recommendation early last month by Estes Snedecor, special master of the court, that the second alternative amended plan for reorganization of Portland Electric Power be accepted by the court.

Pennsylvania

To Purchase Utility Assets

THE Pennsylvania Electric Company, Johnstown, has filed with the Federal Power Commission an application for authorization to acquire all the utility assets and facilities and assume certain liabilities of the Pennsylvania Edison Company, Altoona, for a cash consideration of $42,451,400.

The financing of the acquisition will be through issuance and sale by Pennsylvania Electric of $23,500,000 first mortgage bonds, 101,000 shares of cumulative preferred stock, $5,000,000 of 10-year serial notes, 68,843 shares of $20 par value common stock, and the remainder from cash on hand.

Pennsylvania Electric (Penelec) and Pennsylvania Edison (Pened), subsidiaries of Associated Electric Company, operate in contiguous territories and the electric systems of the two companies are interconnected and integrated. The completion of the transaction, the application stated, will simplify the corporate structures of Pened and Penelec, will eliminate unnecessary corporate expense and duplication of records, and will improve the ability to render adequate and economical public service to areas and customers of Pened.

Texas

West Texas Gets Lower Rates

FORT WORTH electric users will save approximately $635,000 yearly in their bills as a result of a reduction in rates for this city announced last month by the Texas Electric Service Company. All of the west Texas area served by the utility will share in the lower cost, said J. B. Thomas, company president.

The greatest reduction will go to residential consumers and to small and medium users of electricity in commercial and industrial establishments.

The total annual saving to all its customers was estimated by the company at $1,142,000.

It results, said Thomas, from an increased load saving resulting from technical development in the production and transmission of electricity, operating efficiencies, the benefits from refinancing, and benefits from the purchase of incidental power from government hydroelectric projects.

Company Changes Name

THE name of the Houston Electric Company has been changed, effective March 15th, to the Houston Transit Company, it was announced recently by Carl Frazer, president.

The change is merely one of terminology, to clarify the name of the company, since it now operates an all-bus system in Houston,

and operates no electric equipment, such as streetcars, Mr. Frazer pointed out.

There will be no change in the officers or in the operation of the company in any way, he added.

The Houston Electric Company has operated the city's transportation system, under the name, since 1901. The first bus, to augment streetcar service, was put in operation on April 1, 1924. The last streetcar was operated by the Houston Electric Company on June 8, 1940.

Virginia

Test Case Set on Taxes

BATTLE lines were drawn on March 22nd for the court fight over Virginia's system of assessing and taxing public service corporations.

The state corporation commission entered a formal order permitting Virginia Electric & Power Company to become a party to proceedings brought by the city of Richmond to test the "40 per cent system." Under this plan of taxation, both real estate and personal property of public service corporations are assessed at approximately 40 per cent of its value.

The city contends in its suit for review of this assessment that Richmond should be permitted to assess public service corporation property on the same basis used for assessing other property in the city.

The test case is set for argument before the state corporation commission beginning April 15th.

Washington

Wire Burying "Out"

COUNCILMAN Alfred R. Rochester said recently that any well-meaning citizen who suggests that Seattle could be improved in appearance if all power and telephone lines were taken from poles and put underground should be prepared to tell how to finance the estimated cost of more than $400,000,000.

The councilman based his $400,000,000 figure on data supplied by the Seattle City Light Department, Puget Sound Power & Light Company, and the Pacific Telephone & Telegraph Company.

Superintendent E. R. Hoffman of City Light told Rochester that his department had estimated it would cost at least $200,000,000 to put its overhead wires under the ground.

Hoffman said City Light has more than 7,000 miles of wires in its overhead primary and secondary systems; more than 834 miles in the overhead street-lighting system; 530 miles on its 26,000-volt system; and more than 85 miles of telephone lines above the ground.

He said a considerable increase in rates would be necessary "to pay off the investments incurred and to take care of the increased maintenance and depreciation."

Frank McLaughlin, president of Puget Sound Power & Light Company, estimated it would cost upwards of $100,000,000 to put its facilities underground. He said the company has 1,040 miles of pole lines; 5,215 miles of overhead wire; 46,165 poles; and 178 miles of underground cable.

Frank Cleary, telephone company official, informed Rochester that his company would have to spend not less than $40,000,000.

Wisconsin

Use of REA's Funds Opposed

LEGALITY of the proposed use of funds of the Rural Electrification Administration by the new Badger Electric Coöperative of Amery, Wisconsin, for the purchase of the Wisconsin Hydro Electric Company, a private utility, was questioned recently by G. H. Bell, Madison attorney.

Mr. Bell raised the point at a hearing conducted by the state public service commission on the proposed purchase of the utility company by the coöperative for $3,649,000. He pointed out that the coöperative planned to serve customers other than its members.

"This is probably the most important case of this kind ever to come before the commission," Mr. Bell said. "It raises the question of legality of obtaining these funds from the Federal government."

Mr. Bell proposed that Wisconsin join other interested parties in appealing to the United States Attorney General to seek an injunction in Federal court against loan of REA funds to purchase the electric property of a private company.

The Latest Utility Rulings

Original Cost Governs Accounting for Property Acquired by Lessee

THE California commission authorized the Pacific Gas and Electric Company to purchase from a lumber company certain electric properties, terminating an obligation of the utility company to supply power to the lumber company except as an ordinary public utility undertaking. Accounting for the property acquired was limited to original cost instead of present acquisition cost.

By a prior agreement the lumber company had conveyed lands and stream rights to the utility in exchange for a permanent power supply from generating plants constructed by the utility and deeded to the lumber company. These plants had been operated by the utility since 1922 as lessee.

There was testimony that the utility would be justified in paying at least $2,000,000 for release of its obligation to supply power without charge. It asked the commission to accept its proposed assignment of $1,730,168 as an appropriate entry upon its books to record the acquisition cost. This the commission refused to do. It limited the amount to estimated original cost totaling $1,439,168.

The company was permitted to charge to operations, over a period of three years, the difference representing the cost of obtaining the cancellation of its obligation to deliver power without charge. This was because of the benefits accruing in the future by reason of such discharge. *Re Red River Lumber Co. et al. (Decision No. 38421, Application No. 26910).*

Therm Basis for Gas Rates Takes Care Of Change in Heat Units

THE application of a multiplier to volumetric use of gas is an indirect method of adjusting for a change in the number of heat units delivered. This method, says the New Jersey board, may be confusing to some customers. The same purposes can be accomplished without affecting charges to customers by restating rates for service on a heat-unit basis, commonly referred to as the therm basis.

The occasion for the expression of this view arose from the filing of a petition by Salem Gas Company for permission to change its method of billing by applying a multiple of 1.4 to the consumption indicated by customers' meters. The company had effected a changeover from its manufactured gas, having a heating value of about 530 BTU per cubic foot, to propane-air gas having a heating value of 742 BTU per cubic foot. This was a 40 per cent increase in heat units. The company had adjusted customer appliances and had applied the 1.4 multiple to bills without filing new rate schedules.

Failure to obtain prior approval from the board was attributed to a misunderstanding as to the necessity of such action, since the use of the multiplier was merely intended to compensate for the increased heat units delivered and was not intended to increase revenues or bills to customers. The board took the position that changes in a heating-value standard and accompanying changes in

billing practice are changes or alterations of existing classifications.

A restatement of rates for service on a therm basis was ordered. Decrease or increase of the BTU content, said the board, is followed by increased or decreased consumption of gas in proportion to the change in heating value. To illustrate, the board said:

> . . . where service is sold on a volumetric basis, as in Salem, when a cubic foot of manufactured gas goes through the customer's meter some 530 BTU are delivered. However, when a cubic foot of propane-air gas goes through the meter some 742 BTU are delivered, or 40 per cent more heat units than contained in the manufactured gas. As long as appliances are suitably adjusted a customer need only use 1.0 cubic feet of 742 BTU propane-air gas to obtain the same service as with 1.4 cubic feet of 530 BTU manufactured gas. It would appear, therefore, that the change in billing practice has been calculated to result in a charge for a given number of heat units that will be the same for propane-air gas as manufactured gas.

Re Salem Gas Co.

Higher Telephone Rates Must Await Completion of Conversion Program

AN application by the Lexington Telephone Company for authority to acquire certain real estate, erect a building thereon, and acquire and install central office equipment and other facilities necessary to convert from a manual system to a rotary dial automatic system was granted by the Kentucky commission. The commission, however, denied authority to increase rates.

Estimates of costs and operating revenues and expenses following conversion were submitted.

The public service commission was of the opinion that a rate schedule could be considered more intelligently after actual costs of conversion are known and when estimates of revenues and expenses can be based upon conditions then prevailing.

The law, said the commission, requires the fixing of reasonable rates. In reply to a contention that the company would be enabled to obtain moneys necessary at a better advantage if higher rates were authorized, the commission said that prospective creditors might reasonably assume that the commission would increase rates at the proper time. *Re Lexington Telephone Co. (Case No. 1298).*

Injunction Order against Union Interference With Service Reversed

THE appellate division of the New York Supreme Court has reversed the action of a lower court granting an injunction against union interference with the installation of gas and electric service in a real estate subdivision. The lower court had acted on the theory that, since the home owner seeking service and the public utility company were not parties to the labor dispute, the New York Labor Injunction Statute, § 876-a of the New York Civil Practice Act, did not apply.

This controversy first came before the New York commission in a proceeding by a home owner in a real estate subdivision who complained that union pickets seeking to organize employees of builders were interfering with his obtaining service. The commission dismissed the proceeding in 62 PUR(NS) 1. The union, in the lower court proceeding, had disclaimed any intention of picketing the home owner. It insisted that its quarrel was only with the developer and its only purpose was to picket

peacefully and with a limited number of pickets the entrance to the tract. The lower court, in restraining interference with utility installations, made the following statement:

> Inviolable as is the right of free speech, the basis of the right to picket, it has its limits, and in this case, in my opinion, the results of its exercise are unduly severe to persons not concerned in the discussion. The Supreme Court of the United States in Bakery & Pastry Drivers & Helpers *v.* Wohl (1942) 315 US 769 declared (page 775): "A state is not required to tolerate in all places and all circumstances even peaceful picketing by an individual." By interfering with the right of the plaintiff to the performance of a statutory duty owed him by the defendant, the council is, in the language of that court, embarrassing the state in its task of governance; the means which have been adopted to make its grievances known to the public have created oppressive and unlawful repercussions upon the interests of the plaintiff, a stranger to the issue.

The appellate court did not go into the merits of the case, but in a memorandum opinion stated that the case grew out of a labor dispute and § 876-a had not been complied with. *Schivera v. Long Island Lighting Co. et al.*

Toll Division Contract Upheld

IN assuming jurisdiction of a dispute between a local telephone company and an interstate telephone system over the division of toll charges, the Missouri commission declared that no agreement to submit to arbitration was needed to confer jurisdiction on it. A threat of discontinuance of toll service made the interest of the telephone-using public paramount to the private interests of the companies.

In its examination of evidence presented by the local company to illustrate the unfairness of the proposed toll division contract, the commission discovered that the return claimed to be realized by the local company from its local exchange system was greatly out of proportion to the return of other local companies similarly situated, and then observed that the local rates of the company should probably be lowered. Evidence showing that the return of the interstate system from its toll property within the state was not disproportionate to the valuation of such property was given great weight in deciding that the division of tolls under the agreement was not unreasonable. *Re Southwestern Bell Teleph. Co. (Case No. 10,076).*

Commercial Consumer Denied Right to Contest Refund to Other Classes

A COMMERCIAL consumer of the Alabama Power Company was unsuccessful in an attempt to overthrow an order of the Alabama commission directing the credit or refund of excess earnings to electric residential and municipal street-lighting consumers. The state supreme court held that the complainant had not shown that he was an interested party. He had failed to show that any substantial right would be affected by the order.

The commission, after finding that revenues for 1944 were excessive by approximately $600,000, had ordered a credit or refund equivalent to 100 per cent of the December, 1944, bills of consumers in the classes mentioned. The order made reference to the fact that larger reductions in retail rates previously effected had been applicable to service other than residential electric and municipal street lighting. The court said:

> These recitals, therefore, clearly demonstrate that in making the order of December 29th the commission considered all clas-

sifications and reached the definite conclusion that it would be equitable and just to make the refund apply to the residential and municipal street-lighting consumers.

The amount of the reduction was shown to come within the influence of the Federal income and excess profits taxes. The Secretary of the Treasury, the court noted, had issued a statement to the effect that the Treasury offered no objection to orders reducing rates because of the fact that this might result in the collection of excess profits taxes by the government.

But whatever might be the attitude of the Treasury Department, the court said, it was clear that the complainant did not seek to speak for the Federal government in the matter of excess profits taxes. If he should succeed in his action, the company must proceed to collect from 194,000 residential consumers and the municipalities involved the amount of the refund, which doubtless would ultimately result, if and when collected, in being to a large extent absorbed by excess profits tax. The complainant would get no better service. He would get no lower rate. His legal rights would in no manner be affected. The benefit to residential consumers, the court said, works no injury to him. *M. W. Smith Lumber Co. v. Alabama Public Service Commission et al. 24 So2d 409.*

Accounting for Equipment and Operative Rights Purchased

THE California commission, in authorizing a corporation to acquire a stage business, ruled that the purchaser should charge to its intangible property account not more than the part of the purchase price allocated to equipment. The present owner of certificates of public convenience and necessity had paid to the commission $100 as filing fees. This the commission permitted to be charged to intangible capital. An additional $100 paid for the certificates and an amount paid for good will were required to be charged as a deferred debit to be written off by a charge to income.

The purchasing corporation was authorized to issue nonvoting preferred stock, as the transaction was a step in bringing better transportation to the community and the proposed financing arrangements had been worked out by men who were willing to put their money into the enterprise under the conditions stated.

Ordinarily, said the commission, it did not look with favor on the issue of nonvoting preferred stock.

It provided in its order, however, that, upon disposition of such stock by the initial shareholders, the articles of incorporation should be amended to give holders of preferred shares the same voting rights per share as are enjoyed by holders of common shares. *Re Butler et al. (Decision No. 38464, Application No. 27077).*

Lease of Certificate to Subsidiary Operating Company Disapproved

APPROVAL of a renewal of a lease of a certificate by a holding company to its subsidiary operating company was denied by the New York commission, which believed that the grant of authority and the operating property should be owned by one corporation. It was observed that the trend for several years has been in the direction of corporate simplification and that such trend has been reflected in both state and national legislation.

The record showed that the leased certificate under which the subsidiary was operating had expired and that no appli-

cation for approval of the lease had been submitted to the commission until some two years after expiration. This situation had been allowed to continue in the expectation that the companies themselves would eliminate the unnecessary corporate complication and that the end of the last lease would terminate the present arrangement. This expectation had not been realized.

The renewal would continue this peculiar arrangement for another five years, with the payment of an annual rental by the subsidiary to the parent company. For this rental the subsidiary would obtain nothing but a right to operate.

No tangible property was involved and there was apparently nothing else which the operating company would receive in return. Concerning this, the commission said:

> If one were to capitalize an annual rental of $100 at 5 per cent, it would appear that by allowing this situation to continue the commission would virtually be recognizing that a certificate issued by the state without exacting any payment therefor may be used to impose a burden on the public and indirectly to evade the provision of statute which prohibits the capitalization of a franchise or a right to operate in excess of the amount actually paid to the state or to any political subdivision thereof as consideration for the granting of such right (§ 62 of the Public Service Law). Technically, it might be claimed that this is not a capitalization of a right but if a right is leased and a payment is permitted in excess of a fair return on the amount prescribed by statute as the limiting amount to be recognized, the whole purpose of § 62 of the Public Service Law is evaded.

The commission, in denying the petition, advised the companies that they were operating illegally and that it would proceed to take legal action unless prompt elimination of the present condition was effectuated. *Re Smith (Case 6851); Re Blue Mountain-Fulton Chain Bus Lines, Inc. (Case 4453).*

Other Important Rulings

THE California commission denied an application to issue debentures for refunding purposes where the testimony was not convincing that there was sufficient negotiation carried on in the offer of sale, although one commissioner dissented on the ground that refunding would result in a substantial reduction in annual interest charges, that a witness had expressed the opinion that the sale under the plan proposed would be distinctly to the company's benefit and no higher price resulting in greater net proceeds could be obtained, and that his testimony stood unchallenged. *Re Pacific Telephone & Telegraph Co. (Decision No. 38259, Application No. 26968).*

The California commission authorized the Pacific Gas and Electric Company to issue and sell bonds at a price to be fixed by supplemental order following competitive bidding, although a dissenting commissioner objected that the commission had referred to no facts compelling it to the conclusion that the sale should be at competitive bidding. He thought the commission should either state why competitive bidding was deemed to be prerequisite or should announce an intention to adopt a competitive bidding rule applicable to all. *Re Pacific Gas & Electric Co. (Decision No. 38274, Application No. 26985).*

The court of criminal appeals of Texas held that one who drives a motor vehicle for himself or another for the purpose of delivering that vehicle to some other place is not a motor carrier within the meaning of the Motor Carrier Act requiring display of identification plates. *Shires v. State, 191 SW2d 475.*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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COMPRISING THE DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

VOLUME 62 PUR(NS) NUMBER 3

Points of Special Interest

Titles and Index

TITLES

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MISSOURI PUBLIC SERVICE COMMISSION

Re General Order No. 38-A

Case No. 10723
December 28, 1945

HEARING *on objections to general order relating to crediting income to depreciation reserve fund; General Order 38-A canceled and new rules and regulations prescribed. For previous decision, see (1944) 55 PUR(NS) 227.*

Depreciation, § 41 — Reserve fund — Income credit.

1. A proper credit attributable to the use of depreciation funds by utilities can fairly and equitably be applied for the benefit of customers when an undepreciated rate base is used, and such credit should take the form of a reduction of the utilities' operating expenses, which may in turn reduce the allowable return, p. 132.

Accounting, § 10 — Income on depreciation funds.

2. Public utilities required by the Commission to credit depreciation funds for the utilities' use of such funds, as a reduction of operating expenses, need not currently record in their books of account as a reduction of their annual charges to operating income for depreciation, the income attributable to their use of the funds, p. 134.

Depreciation, § 41 — Reserve funds — Statement as to income.

3. Public utilities required to credit to depreciation funds the income thereon, should include in reports required by the Commission, schedules in such form as the Commission may prescribe showing the income from the investment of moneys in depreciation funds, p. 134.

Depreciation, § 41 — Income credit to reserve fund — Adjustment of reserve balance.

4. Total depreciation reserve balances should be adjusted for depreciation funds provided by the utilities themselves and not by their customers, in ascertaining the principal amount of depreciation funds subject to an income credit for use of such funds by the utilities, p. 134.

Depreciation, § 41 — Reserve funds — Income credit — Rights of utilities and customers.

5. Public utilities, owning the property constructed from depreciation funds and charged with the responsibility to maintain and operate the property in the public interest (assuming all the risks associated with ownership, management, and operation), are entitled to compensation for assuming those responsibilities and risks, and should not be deprived of the full amount of the income from such property as interest on depreciation funds; customers, however, are entitled to share in such income, at least to the extent of the value of the funds, just as any lender of funds is paid from the income of a corporation for the value of his funds, p. 135.

Depreciation, § 5 — Powers of Commission — Income credit to fund.

6. The fixing of the interest rate for depreciation funds used by public utilities is a function of the Commission, and the Commission has authority to prescribe rules and regulations as to the amounts to be credited for the use of such funds, p. 136.

Depreciation, § 41 — Reserve fund — Income credit — Interest rate.

7. An appropriate interest rate for use in determining the income from the investment of moneys in depreciation funds, to be applied in the rate-making process in reduction of the utilities' allowable return, was held to be 3 per cent per annum, in view of evidence as to the cost of borrowed money, degree of risk associated with such funds, the right of utilities to just compensation for managing and operating property and assuming the risks, and varying economic conditions when funds could not be invested in income-producing assets, p. 136.

Valuation, § 36 — Rate base — Undepreciated original cost.

Statement by Missouri Commission, in proceeding where income credits for use of depreciation funds are required, that it will be the policy of the Commission in the future, whenever possible and warranted by the facts, to fix a rate base based on undepreciated original cost of utility property used and useful in the public service, to which may be added materials and supplies and cash working capital, p. 133.

Depreciation, § 1 — Definition.

Depreciation defined as representing the consumption in service of utility property, which is a part of the cost of services rendered, p. 135.

Depreciation, § 7 — Right to allowance — Rate proceeding.

Discussion of the propriety of providing for depreciation, in addition to other costs of service, in fixing rates, p. 135.

Depreciation, § 42 — Reserve funds — Use.

Discussion of the principle that depreciation funds cannot be returned to investors of capital but must be retained so that when utility plant wears out funds shall be available to provide new facilities, depreciation funds being in the nature of trust funds maintained for and dedicated to the replacement of worn-out plant, p. 135.

(WILSON, Commissioner, dissents.)

By the COMMISSION: On August 14, 1944, this Commission issued its General Order 38-A, 55 PUR(NS) 227, Wilson Commissioner, dissenting. The general order was directed to the gas, electric, water, telegraph, telephone, and heating utilities under our jurisdiction and relates to depreciation and the accounting therefor by such utilities as prescribed by §§ 5656 and 5680, Rev Stats Mo 1939. We stated in the general order that in our opinion the utilities are not fully complying with the provisions of §§ 5656 and 5680, in that the income from the investments of moneys in their depreciation reserve funds pertaining to property in Missouri is not being credited to and carried in such funds; also, that the utilities have their depreciation reserve funds invested in plant, securities, and other properties and are

deriving income from such investments. The general order required the utilities to file with this Commission on or before October 2, 1944, (a) statements showing income derived from their depreciation reserve funds for the year ended July 31, 1944, (b) copies of balance sheets as of July 31, 1944, and (c) statements showing income derived from all sources for the year ended July 31, 1944; and provided that unless appropriate pleadings showing cause to the contrary should be filed with this Commission on or before October 2, 1944, the utilities not so pleading would be required, on and after January 1, 1945, to credit their depreciation reserve funds pertaining to property in Missouri with the income derived from the investment of moneys in such funds, and to reduce their annual charges to operating income for depreciation by the amount of such income. The general order further provided that unless appropriate pleadings showing cause to the contrary should be filed with this Commission on or before October 2, 1944, the utilities would be required to set aside moneys and accrue same to their depreciation funds at the same annual rates then being used for such accruals, either pursuant to orders of this Commission or by orders of their managements, and to continue such rates for accruals unless and until cause should be shown why other and different rates should be used. Finally, the general order provided that if appropriate pleading should be filed by any public utility, the issues raised thereby would be set down for hearing before this Commission on proper notice.

A copy of General Order 38–A was served on each utility in Missouri of the classification affected by the order. Almost without exception, such utilities filed pleadings within the allotted time which were designed to show cause why the terms and provisions of General Order 38–A should not be applied. Various objections and questions were raised in the pleadings, both on legal and equitable grounds. Thereafter, conferences were held between representatives of certain of the utilities and this Commission and its staff, and a report was submitted to our staff by a committee of accountants representing the utilities.[1] Following this, the matters involved were consolidated into this Case No. 10,723 and set down for hearing at Jefferson City on December 17, 1945, upon appropriate notice to all interested parties. Such hearing was duly held and at that time the cities of St. Louis and Kansas City were granted authority to intervene. All of the utilities which desired to be heard in the matter were represented by officials or by counsel. At the close of the hearing all utilities represented were advised by the Commission that unless they expressed disagreement with the evidence presented on behalf of the utilities it would be assumed that all adopted the evidence proffered at the hearing. Most of those present expressed their concurrence and none objected. For the reason that this is a matter of paramount importance,

[1] This report, dated June 11, 1945, deals with methods for determining the amount of income from depreciation funds. It was submitted at the request of our staff as a result of conferences between our staff and the utilities' accounting committee.

we deem it advisable to discuss the issues fully.

As is indicated above, the issuance of General Order 38–A arose out of the provisions of §§ 5656 and 5680 of our Public Utility Act which relate to depreciation and depreciation accounting. The provisions of the two sections are identical except that 5656 applies to gas, electric, and water utilities and 5680 to telegraph and telephone utilities; such provisions are made applicable to heating utilities by § 5684. Section 5656 is quoted below:

"The Commission shall have power, after hearing, to require any or all gas corporations, electrical corporations, and water corporations to carry a proper and adequate depreciation account in accordance with such rules, regulations, and forms of account as the Commission may prescribe. The Commission may, from time to time, ascertain and determine and by order fix the proper and adequate rates of depreciation of the several classes of property of such corporation, person, or public utility. Each gas corporation, electrical corporation, and water corporation shall conform its depreciation accounts to the rates so ascertained, determined, and fixed, and shall set aside the moneys so provided for out of earnings and carry the same in a depreciation fund and expend such fund only for such purposes and under such rules and regulations, both as to original expenditure and subsequent replacement, as the Commission may prescribe. The income from the investments of moneys in such fund shall likewise be carried in such fund."

Pursuant to the authority granted by §§ 5656 and 5680, this Commission, in the past, has fixed depreciation rates for most of the utilities under its jurisdiction; in some instances the utilities have provided for depreciation based on rates fixed by their managements. Such rates have been designed to provide depreciation within the useful life of the utility property. The utilities have used the funds accumulated by reason of their depreciation reserve provisions for such purposes as construction of additions, betterments, and extensions of property and plant, working capital, and investments in securities,[2] and admit that they are deriving income from such use of the funds. It is the income attributable to use by the ultilities of deprecation funds that we are here concerned with. For §§ 5656 and 5680 provide that "the income from the investments of moneys in such fund (the depreciation fund) shall likewise be carried in such fund."

[1] Although the utilities strenuously deny the proposition that their customers have any interest, in law or in fact, in depreciation funds, or any other utility funds or property, their witnesses agree with the validity of the principle that when an undepreciated rate base is used, a proper credit attributable to the use by the utilities of depreciation funds can fairly and equitably be applied for the benefit of the customer.[3] We do not

[2] Since depreciation funds are not segregated from other funds in the accounting records of the utilities, it is not possible to trace the particular use of all of such funds. It can be determined, however, that such funds, together with funds procured from other sources, have been used by the utilities for such purposes as those enumerated.

[3] General Order 38-A provided that such income would be applied in reduction of an-

see how this principle can be considered as other than fair and equitable. For depreciation is a component part of established rates for service and the funds to pay for depreciation are currently supplied to the utilities by their customers through their rates for service. And when such funds, pending their use for replacement of completely depreciated and retired plant, are used by the utilities for other purposes, the customers are equitably entitled, through their rates for service, to appropriate credit for such use, just as any investor is entitled to a return on funds supplied by him to a corporation for the corporation's use.[4] Accordingly, we shall require that appropriate credit shall be given with respect to the utilities' use of the depreciation funds, and that such credit shall take the form of a reduction of the utilities' operating expenses, which may in turn reduce the allowable return.

It is obvious, however, that if the utilities' allowable return is reduced by income on depreciation funds, the utility rate base upon which the allowable return is predicated, should be an undepreciated rate base. This is true for the reason that to reduce the allowable return by deducting depreciation from the rate base and to also reduce it by income on the depreciation funds would obviously constitute duplication. While, in the past this Commission has followed the rulings of the courts in fixing the rate base for the utilities, which required deduction of depreciation from the rate base, and under which the interest or income methods of computing depreciation provisions in determination of the allowable return could not equitably be applied, we interpret the recent decisions of the United States Supreme Court in the Natural Gas Pipe Line Co. Case and the Hope Natural Gas Co. Case as no longer requiring adherence to the former rules.[5]

This Commission for some time has been concerned with the long delays and cumbersome procedure inherent in the determination of costs of reproduction of utility properties and the existing depreciation in utility properties, and has been desirous of adopting a rate-making formula which will be simple, expeditious, and effective. We are convinced that the so-called "original cost rate base,"[6] appropriately modified, adequately answers those requirements as to the utility rate base. Accordingly, it will be the policy of this Commission in the future, when-

nual charges to operating income for depreciation. This would reduce the utilities' allowable return, and the over-all cost of service to the utilities' customers.

[4] As was stated by Professor Herbert B. Dorau of Columbia University, a recognized authority in these matters, in his article entitled "Economic Implications of Public Utility Depreciation Accounting" (see The New York Certified Public Accountant, June, 1944) " . . . It must be recognized that the assets reflected by the depreciation reserve balances arise from payments made by customers in order to meet a future liability, and that the customer is entitled to a return or compensation for the use of such funds by the company according to the character and extent of their employment as earnings assets until they are used up in extinguishing the liability reflected by the reserve . . . "

[5] Federal Power Commission v. Natural Gas Pipeline Co. (1942) 315 US 575, 86 L ed 1037, 42 PUR(NS) 129, 62 S Ct 736. Federal Power Commission v. Hope Nat. Gas Co. (1944) 320 US 591, 88 L ed 333, 51 PUR (NS) 193, 64 S Ct 281.

[6] The "original cost" rate base is sometimes referred to as "prudent investment," and may be modified when appropriate to reflect other allowable costs. The basic foundation, subject to appropriate modification, is the actual legitimate cost of the utility property at the time of its construction and dedication to the public service.

ever possible and warranted by the facts, to fix the utility rate base upon which the allowable return is predicated based on the undepreciated original cost of the utility property used and useful in the public service, to which will be added materials and supplies and a reasonable allowance for cash working capital. Other adjustments in this rate base may be made when justified by the facts. With such a rate base, "income from the investment of moneys in depreciation funds" may be appropriately recognized.

[2, 3] The question presents itself as to whether the utilities shall be required to currently record in their books of account, as a reduction of their annual charges to operating income for depreciation, the income attributable to their use of depreciation funds. Since this is a rate-making matter, adopted for the primary purpose of preserving the principles of equity as between the customers of the utilities and the utilities, we see no reason for such a requirement. However, we shall require, in order that we may be currently informed and in a position to take such action as may be necessary, that the utilities shall include in their annual reports, and in such other reports that may be required by this Commission from time to time, schedules in such form as we shall prescribe showing the income from the investment of moneys in depreciation funds.

[4] Perhaps the most difficult question for decision in this matter is the question of how the income from the investment of moneys in depreciation funds shall be determined. This question divides itself into two parts, (1) ascertainment of the principal amount of depreciation funds, and (2) having ascertained such principal amount, methods for determining the income attributable to the ascertained principal amount of the funds.

As to the first part of this question, it is obvious that the principal amounts of depreciation funds are exactly represented by the balances in the utilities' depreciation reserves, which are usually provided from operating income. However, the evidence shows that, in some instances, depreciation reserves have been provided, in part, not from operating income, but by appropriations from utility surplus, or otherwise than from operating income. It is obvious that, in such instances, depreciation funds have been provided by the utilities themselves, and not by their customers, and, accordingly, that, in ascertaining the principal amount of depreciation funds subject to such income credit that we may impose, that total depreciation reserve balances should be adjusted by any portions thereof so provided. We will permit such adjustments but shall require convincing proof as to the validity thereof.

There is considerable evidence in the record relating to methods for determining the income attributable to the ascertained principal amount of depreciation funds. We do not deem it necessary to review all of such evidence, but do consider it advisable to set forth the fundamental considerations which have formed the bases for our conclusions, including a brief discussion of the nature of depreciation funds and the relationship of the utilities and the utilities' cus-

tomers to such funds. At the outset it should be stated that we are not dealing with the problem of determining accrued depreciation from the standpoint of the utility rate base, but rather the question of an appropriate credit which may be equitably applied for the benefit of the customers as representing income applicable to depreciation funds.

Depreciation, of course, represents the consumption in service of the utility property and is a part of the cost of the services rendered. Accordingly, the rates for service are designed to include a component for depreciation, in addition to all other costs of service, and a fair return upon the investment. It is an obligation of the customer to pay in his rates for the cost of the service, including the cost of depreciation, just as it is an obligation of the utility to render the service at cost, plus a fair return upon the investment. One of the objectives of depreciation accounting is to provide a reasonable method for charging currently to income the cost of depreciation, in such orderly manner that those in whose service the property is used up shall pay therefor.

Depreciation accounting results in the accumulation of moneys by the utility, which are commonly referred to as "depreciation funds," or "depreciation reserve funds." Accumulated depreciation funds cannot be returned to the investors of the capital but must be retained by the utilities so that when utility plant wears out in service, funds shall be available to provide new facilities in replacement of the worn-out plant. Accordingly, depreciation funds are in the nature of trust funds, maintained for and dedicated to the replacement of worn-out plant. The utilities are the custodians of the funds and are responsible for them to the end that funds shall be available as required to replace worn-out plant and a continuity of service shall be maintained. And when, pending the use of depreciation funds for the replacement of worn-out plant, the utilities use the funds for other purposes, they are, in practical effect, borrowing from the funds. As we have previously stated, the utilities, from time to time, use the funds for such purposes as working capital, construction of property, or investments in securities, and admit that they earn income from such use of the funds. The question before us is the rate of interest that the utilities shall be required to pay for such use of the funds.

[5] We are aware that, to the extent possible, the utilities use accumulated depreciation funds for construction of property and that the utilities earn income from such property. However, it must be borne in mind that such property belongs to the utilities and that they (the utilities) are charged with the responsibility to maintain and operate the property in the public interest to the same extent and in the same manner as they are required to maintain and operate property acquired or constructed from funds derived from investors. The utilities assume all of the hazards and risks associated with the ownership, management, and operation of such property, including any losses or reductions of earnings below a fair or compensatory return, whereas the customers assume no responsibilities or risks whatever, with respect to the property. And the utilities are justly

entitled to receive proper compensation for assuming those responsibilities and risks. To deprive the utilities of the full amount of the income from such property, as interest on depreciation funds, would be grossly unfair, and would be equivalent to confiscating the property for the exclusive benefit of the customers, and at the same time requiring the utilities to gratuitously operate the property and assume all of the risks as to the property and its operation. However, the customers are entitled to share in such income at least to the extent of the value of depreciation funds, just as any lender of funds is paid from the income of a corporation for the value of his funds.

[6, 7] There is considerable testimony in the record as to the proper rate of interest which should be applied with respect to the utilities' use of depreciation funds. Witnesses for the utilities assert that when the funds are used for construction of additional property, the interest rate should not exceed, or should be less than, the rate the utilities would be required to pay if the funds were borrowed on long-term funded obligations, such as first mortgage bonds. These witnesses introduced evidence showing that, for some time in the past, utility bonds were marketed at approximately 3 percent per annum, and that recently two of our larger Missouri utilities sold their bonds (or debentures) at an approximate yield of 2¾ per cent. The witnesses point out that the cost of money and the worth or value of money are largely dependent on the element of risk, and maintain that there is less risk associated with depreciation funds than with any class of utility capital, even first mortgage bonds. In support of their position, the witnesses point out that the income attributable to the use of depreciation funds would be applied for the benefit of customers in reduction of the utilities' allowable return prior to and without regard to the payment of interest on bonds or other obligations, and, thus, that as to safety of income, depreciation funds rank ahead of bonds or other obligations; and as to principal, that the amounts of depreciation funds to which interest rates would be applied are completely within the jurisdiction of this Commission, and thus are subject to little, if any, risk. The witnesses further contend that, as a matter of fairness, and bearing in mind that interest on depreciation funds will be applied in reduction of the utilities' allowable return, the utilities, in any event, should not be required to pay more for depreciation funds, when used by them for construction of additional property, than they would be required to pay out of their allowable return for funds they could borrow on long-term funded obligation.

Other witnesses referred to the fact that at times the utilities are unable to use depreciation funds for construction of additional property. They point to the recent war period, when restrictions on materials needed for the war effort so curtailed construction that many utilities could not use depreciation funds for property additions and extensions, and that as a result, depreciation funds remained idle or were invested in short-term government securities, yielding in many instances less than 1 per cent per annum. It was stated that similar conditions

have occurred during periods of high prices or industrial depression. The witnesses further stated that even in normal times accumulated depreciation funds cannot always be immediately used for property additions, resulting in a lag between the time the funds become available and the time they may be so used, during which periods the funds are idle and earn no income. The witnesses urged that these conditions be taken into account in fixing the interest rate for depreciation funds.

Other witnesses for the utilities expressed the view that an appropriate interest rate for depreciation funds should not exceed the interest rates on government securities, which they stated range from less than 1 per cent to approximately 2 per cent per annum. They pointed to the trust character of depreciation funds, and asserted that the interest rate for government securities most nearly reflects the worth of trust funds and the risks associated with trust funds.

An exhibit which was submitted in evidence to show yields on a representative list of high-grade bonds included only two Missouri utility companies. One of these was earning a yield to maturity of 3.46 per cent, the other was earning 2.63 per cent. The Commission is aware that only two Missouri utilities have bonds outstanding which bear a coupon rate of less than 3 per cent. Other utility bonds which have been issued in Missouri have coupon rates in excess of 3 per cent. In some cases the rate is considerably in excess of 3 per cent.

We have given careful consideration to all of the evidence introduced in this proceeding, and also to the principles above discussed relating to the nature of depreciation funds. There can be no doubt that when the utilities use depreciation funds for construction of property (which, as we have before indicated, represents the predominant use of the funds) the utilities are entitled to just compensation for discharging their obligations to manage and operate such property in the public interest, and for assuming the risks associated with such property,[7] and that to deprive the utilities of a disproportionate share of the permissible income from such property, as income on depreciation funds, would be unfair to the utilities. On the other hand, the customers of the utilities, who supply depreciation funds, are entitled to receive adequate and just recognition with respect to the use of the funds by the utilities consistent with the worth or value of the funds.

The fixing of an interest rate for depreciation funds is an integral part of the rate-making process in public utility regulation, since the interest credit produced thereby directly affects the utilities' allowable return and the rates charged to the public for utility service. The Public Service Commission Act (Chap 35. Rev Stats Mo 1939) establishes the policies of this state in connection with public utility

[7] As was stated in the Report to the Board of Public Utility Commissioners of New Jersey on the Rate Adjustment Plan for New Jersey Power & Light Company (see page 66) "The utility is entitled to compensation for management of the investment and for performance of the risk-taking function. Unless the enterprise is reasonably compensated, management might be expected, in the absence of regulatory restraint, to reduce the risk and responsibility by investment (of depreciation funds) in government bonds, or other relatively risk-free securities."

regulation, and while these policies are necessarily set forth in the act in broad outline, § 5579 of the act vests this Commission with "all powers necessary or proper to enable it to carry out fully and effectually all of the purposes (of the act)." And one of the primary purposes of our Public Service Commission Act is just and reasonable rates and charges for utility service.

Accordingly, we believe that the fixing of the interest rate for depreciation funds is a function of the regulatory authority, and that under the general powers delegated to us we are authorized to fix the interest rate for depreciation funds to the end that the rates charged in this state for public utility service shall be just and reasonable, and the policies established by the legislature shall be fully and effectually carried out. Moreover, §§ 5656 and 5680 of the act authorize this Commission, in connection with depreciation funds, to prescribe, in its discretion, rules and regulations "both as to original expenditure and subsequent replacement" of such funds and further provide: "The income from investments of moneys in such fund shall likewise be carried in such fund." We believe that such authority necessarily includes the authority to prescribe rules and regulations as to the amounts to be credited for the use of such funds.

Upon consideration of all of the evidence in this matter, and based upon our intimate knowledge of the operations and finances of the utilities under our jurisdiction, and taking into consideration the fact that the utilities at times, varying with economic conditions, are not able to invest depreciation reserve funds in income-producing assets, we are of the opinion that an appropriate interest rate for use in determining the income from the investment of moneys in depreciation funds to be applied in the rate-making process in reduction of the utilities' allowable return is 3 per cent per annum. We are also of the opinion, since the circumstances surrounding the use of depreciation funds are generally the same as to all utilities, that such rate should be applied in the case of all of the gas, electric, water, telegraph, telephone, and heating utilities under our jurisdiction. However, if it should appear to the Commission or if any utility shall prove that due to unusual or extraordinary circumstances, such rate is not fairly and equitably applicable to it, such rate may be modified according to the circumstances of the particular case.

In conclusion, we are of the opinion that the rate-making practices and policies established in this order are an important step in promoting efficient public utility regulation in this state. This is particularly true in connection with our announced policy relating to the establishment of the utility rate base in future proceedings. For a rate base predicated on original cost can be fixed with a minimum of delay, and original cost, having once been established, can be brought up-to-date on short notice. Moreover, and of equal importance, is the fact that original cost avoids the inflationary effects of reproduction cost in the establishment of the rate base. Also, the consideration of income from the investment of moneys in depreciation reserve funds in the fixing of rates is

in the direction of reducing the overall cost of service.

We are also of the opinion that these practices and policies will be of advantage to the utilities. Their rate base will be stable, and they will be able to determine at all times with reasonable exactitude their position as to allowable income, and thus be in a position to plan more intelligently for the future. In addition, the public utility industry requires large amounts of capital which must be secured on the open market in competition with other industries. And with a stabilized rate structure, capital requirements can be more effectively financed.

Accordingly, it is

Ordered: 1. That General Order 38–A, issued by this Commission on August 14, 1944, 55 PUR(NS) 227, be and is hereby canceled, set aside, and for naught held.

Ordered: 2. That in the process of determining the reasonableness of rates for service, income shall be determined on the depreciation funds of the gas, electric, water, telegraph, telephone, and heating utilities pertaining to their properties used and useful in the public service in Missouri, and shall be applied in reduction of the annual charges to operating income of such utilities.

Ordered: 3. That the income from the investment of moneys in depreciation funds shall be computed at the rate of 3 per cent per annum of the principal amount of such depreciation funds.

Ordered: 4. That the principal amount of depreciation funds of any such utility, for the purposes of this order, shall be deemed to be equivalent to the balance in the depreciation reserve account of any such utility regardless of whether or not any such depreciation reserve account may be represented by a segregated fund earmarked for such purpose; provided, however, that the principal amount of such depreciation funds may be adjusted by the portion or portions thereof which may have been provided under circumstances other than by charges to operating income, or otherwise, such adjustments to be subject to the approval of this Commission. The terms "depreciation funds" and "depreciation reserve accounts" shall be deemed to include the terms "retirement funds" and "retirement reserve accounts."

Ordered: 5. That the rate of 3 per cent per annum referred to in *Ordered:* 3 above shall be applied in the case of each gas, electric, water, telegraph, telephone, and heating utility of the state of Missouri, provided, however, that modification of such rate may be made upon the Commission's own motion or upon proper showing by a utility that such rate is not reasonably and equitably applicable to it.

Ordered: 6. That such utilities shall prepare and include in their annual reports to this Commission commencing with their annual reports for the year 1945, and in such other reports that may be required by this Commission from time to time, schedules showing for the year or period covered by such reports, the income from the investment of moneys in depreciation funds. The schedules referred to shall be in the form prescribed by this Commission and shall include, among other things that may

be prescribed (1) the principal amount of depreciation funds as represented by balances in depreciation reserve accounts; (2) any adjustments of such depreciation funds and accounts with complete details and explanations thereof; and (3) the amount of the income from the investment of moneys in depreciation funds computed at the rate of 3 per cent per annum, or such other rate as may be prescribed by order of this Commission.

Ordered: 7. That the Commission shall retain jurisdiction of this proceeding for the purpose of making any change or changes in the interest rate prescribed in paragraph "*Ordered:* 3" hereof that may be warranted.

Ordered: 8. That this order shall take effect on and after January 31, 1946, and that the Secretary of this Commission shall forthwith serve a copy of this order on all parties interested herein, and that said interested parties be required to notify the Commission on or before January 31, 1946 in the manner required by § 5601, Rev Stats Mo 1939, whether the terms of this order are accepted and will be obeyed.

Osburn, Chairman, Williams, Henson, and McClintock, Commissioners, concur; Wilson, Commissioner, dissents in separate opinion.

WILSON, Commissioner, dissenting: I am unable to concur in this order. I am still of the opinion which I expressed on July 17, 1944, at the time of the issuance of General Order No. 38, and on August 14, 1944, at the time of the issuance of General Order No. 38-A, 55 PUR(NS) 227, that there is nothing in the language of the statute—§§ 5656 and 5680, Rev Stats Mo 1939—either express or implied, or elsewhere in the law which authorizes the making of such an order.

Under these sections this Commission does not have power to fix the rate for earnings upon the depreciation account. In the case of State ex rel. Empire Dist. Electric Co. v. Public Service Commission (1936) 339 Mo 1188, 16 PUR(NS) 437, 440, 100 SW2d 509, 511, Judge Frank speaking for the court said:

"The power of the Commission to make orders relative to the depreciation reserve of the company is conferred by statute. We must therefore look to the statute to determine whether the Commission had authority to make the order in question. It has been well said that, 'when a particular power is exercised by the Commission, or is claimed for it, that power should have its basis in the language of the statute or should be necessarily implied therefrom.' People ex rel. New York R. Co. v. Public Service Commission, 223 NY 373, PUR1918F 125, 119 NE 848, 849, Havre de Grace & P. Bridge Co. v. Towers, 132 Md 16, PUR1918D 484, 103 Atl 319. Turning to the statute, we find that it gives the Commission power, after hearing, to make an order requiring the company to carry a depreciation reserve account in an amount fixed by the Commission, subject to the regulatory control of the Commission."

At the hearing it was given as an opinion by the president of the Union Electric Company of Missouri testifying upon behalf of the utilities that the Commission does not have the power to fix a rate for earnings upon the depreciation account under the language of the last sentence contained

in said §§ 5656 and 5680, i. e., "The income from investments of moneys in such fund shall likewise be carried in such fund." This witness stated that it was his opinion that that language applied to the sinking-fund method rather than the straight-line method of providing for depreciation. The witness stated that it was his opinion that the Commission had the power to fix a rate for the earnings on the investment of depreciation funds in determining what is a fair rate and what is a fair rate base. I agree with the opinion of this witness that this language does not apply to the straight-line method of providing for depreciation and believe that this language in the statute is probably explainable by the fact that the Public Service Commission was originally considered to have jurisdiction over municipally owned utilities the depreciation requirements of which are generally provided for under the terms of the mortgages in the form of a sinking fund.

I cannot agree, however, that our general rate-making powers give us the right to fix a rate for the earnings upon the depreciation account applicable to all electric, gas, water, steam-heating, telegraph, and telephone utilities operating under the jurisdiction of this Commission alike when conditions and circumstances relating to the investment of depreciation accounts vary with the several utilities. That there are various circumstances was recognized by counsel conducting the hearing on behalf of the utilities at the outset of the hearing and is recognized by the report and order itself in providing in *Ordered:* 5. that "modification of such rate may be made upon the Commission's own motion or upon proper showing by such utility that such rate is not reasonably and equitably applicable to it." It is my belief that even if the Commission had power to make a general order upon this subject, and if the matter were a proper subject for a general order, which I do not think it is, the evidence is not sufficient upon which to base such a general order as the Commission does not have before it ample evidence touching the circumstances relating to the various utilities, and the rate so fixed can be nothing more than a guess and it is conceivable that it may result that there are as many exceptions as there are utilities which may come within the provisions of the order.

The statute reads in part as follows: "The Commission may, from time to time, ascertain and determine and by order fix the proper and adequate rates of depreciation of the several classes of property of such corporation, person, or public utility."

It is to be noted that the singular number is used—"corporation, person, or public utility" not corporations, persons, and public utilities. Also, the statute reads further:

"*Each* gas corporation, electrical corporation, and water corporation shall conform its depreciation accounts to the rates so ascertained, determined, and fixed, and shall set aside the moneys so provided for out of earnings and carry the same in a depreciation fund and expend such fund only for such purposes and under such rules and regulations, both as to original expenditure and subsequent replacement, as the Commission may prescribe." (Italics by writer.)

In § 5680 relating to telegraph and telephone corporations the language used is as follows:

"The Commission may, from time to time, ascertain and determine and by order fix the proper and adequate rates of depreciation of the several classes of property of such public utility."

and:

"*Each* telegraph corporation and telephone corporation shall conform its depreciation accounts to the rates so ascertained, determined, and fixed, and shall set aside the money . . ."

Section 5638 relating to common carriers provides in part as follows:

"The Commission may, from time to time, ascertain and determine and by order fix the proper and adequate rates of depreciation of the several classes of property of such corporation, person, or public utility. *Each* railroad corporation, street railroad corporation, and common carrier shall conform its depreciation accounts to the rates so ascertained. . . ." (Italics by writer.)

I believe this statute contemplates that depreciation requirements shall be fixed by the Commission for each utility singly and not collectively. It is my opinion that this matter is not a proper subject for a general order, but that the jurisdiction of the Commission over the depreciation reserve of the several companies should be exercised in individual cases, and I do not consider this impossible or impracticable, but rather a problem that can be accomplished with an adequate staff and diligent effort.

The order is further objectionable for the reason that it assumes that the Commission has power to require the investment of the depreciation account. If the depreciation account is not invested and there are no earnings, then the fixing of 3 per cent is confiscatory and for that reason unlawful.

Section 5638 Rev Stats Mo 1939 is identical with §§ 5656 and 5680 except that it applies to railroad corporations, street railroad corporations, and common carriers. This order is not made applicable to railroad corporations, street railways, and common carriers and for that reason is discriminatory.

After careful consideration, it is my opinion that the order is unlawful and exceeds the powers of the Commission.

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

Georgia Power Company

v.

Federal Power Commission

No. 11104
152 F2d 908
January 7, 1946; rehearing denied February 2, 1946

REVIEW *of order of Federal Power Commission determining that river is navigable, that interests of interstate commerce would be affected by power project, and that license under Federal Power Act is required; affirmed. For Commission decision, see (1944) 53 PUR(NS) 177.*

Water, § 35 — Navigability of river — Use by light craft.

1. Findings that a river was navigable were supported by substantial evidence where the river had been used for navigation over a long period of years by light draft or other river craft, navigation had been the subject of congressional and state action, and funds had been spent in the improvement of navigation, p. 144.

Water, § 18.2 — Power project — Effect on interests of interstate or foreign commerce.

2. A finding that the interests of interstate commerce would be affected by the construction of a hydroelectric power plant at a dam to be built above the navigable part of a river was supported by substantial evidence where it was shown that operations would result in major variations in the stage and navigable depths available for any kind of useful navigation in the lower, navigable part of the river, which after confluence with another river flowed into the ocean, p. 144.

Appeal and review, § 28.1 — Conclusiveness of findings — Federal Power Commission — Power project on river.

3. Findings of the Federal Power Commission that a river is a navigable water of the United States and that the interests of interstate commerce would be affected by the construction of a hydroelectric power project may not be disturbed by the court when supported by substantial evidence, p. 144.

Water, § 35 — Navigability of river — Artificial improvements.

4. A river may be found to be navigable within the meaning of the Federal Power Act when it would be feasible for interstate use after reasonable improvements have been made, p. 147.

Water, § 19 — Jurisdiction of Federal Power Commission — Non-navigable part of river — Power project.

5. The jurisdiction of the Federal Power Commission under the Federal Power Act is not limited to the navigable waters of a river, in view of the

provision of § 23(b) of the act, 16 USCA § 817, relating to construction of projects in streams other than those defined as navigable waters where the interests of interstate or foreign commerce would be affected, p. 149.

Interstate commerce, § 1 — Powers of Congress.

6. Congress has power to legislate where commerce between the states or with foreign countries may be affected, p. 150.

Water, § 4 — Powers of Congress — Navigable capacity of waters.

7. The power of Congress to legislate where commerce between the states or with foreign countries may be affected is not restricted to an adverse effect upon the present and existing navigable capacity of Federal waters; it extends to navigable capacity after reasonable improvements which might be made, and whether the effect is beneficial or injurious, p. 150.

Water, § 5 — Powers of Federal Power Commission — License.

8. The Federal Power Commission may require a license for the construction of a hydroelectric power plant at a dam to be built in a navigable river, a part of which is non-navigable, if upon investigation it finds that the interests of interstate or foreign commerce would be affected, p. 150.

LEE, CJ.: The Georgia Power Company, proposing to construct a hydroelectric power plant at a dam to be built by it on the Oconee river in Georgia, filed a declaration of intention with the Federal Power Commission, as required by the Federal Power Act (16 USCA § 817). Acting thereon, the Commission held public hearings in Washington and Atlanta to determine whether the interests of interstate and foreign commerce would be affected by the proposed project, and, if so, what navigable waters of the United States would be affected. Following these hearings the Commission found the ultimate facts to be (1) that Oconee river from Milledgeville, Georgia, (4 miles below the site of the proposed project) to its mouth, and the Altamaha river into which it flows, are navigable; (2) that the two connect with the Intracoastal canal and the Atlantic ocean to form navigable waters of the United States, used and capable of use in the transportation of persons and property in interstate and foreign commerce; and (3) that due to the relation between the storage capacity of the proposed reservoir and the available stream flow the operation of the power plant would both fluctuate and reduce the navigable depths of the water below the dam and would thus affect navigation. From this the Commission concluded that interstate commerce would be affected by the construction of the proposed project, and ordered that the power company apply for and accept a license in accordance with the terms of the Federal Power Act and the rules and regulations of the Commission thereunder.

[1–3] The power company, here seeking a reversal of this order, contends that the primary facts do not support the finding that the Oconee river is a navigable water of the United States or the finding that the interests of interstate commerce would be affected by the construction of the proposed project. It is also insisted that the provisions of the Federal Power Act do not apply to a project that is located on a non-navigable part

of a stream, or, if the act was intended to regulate such matters, it is to that extent unconstitutional.

The pertinent primary facts found by the Commission are substantially as follows: The Oconee river rises in northeast Georgia, in the vicinity of Gainesville, and flows in a general southeasterly direction to Milledgeville below the proposed dam site, where it drops to the coastal plain. One hundred and forty-five miles below Milledgeville it joins the Ocmulgee river at what is known as the Forks, and thus forms the Altamaha river, which flows 137 miles in a southeasterly direction, emptying into the Atlantic ocean. The Oconee river drains an area of 5,318 square miles, of which 2,900 square miles lie above Milledgeville. From Milledgeville to the Forks, the average slope is slightly more than one foot per mile and there are no falls or rapids. While the Altamaha river has been used the more extensively, both the Altamaha and the Oconee rivers have been used for navigation over a long period of years by light draft or other river craft. Navigation below Milledgeville has been the subject of congressional and state action, and funds have been spent in the improvement of navigation. A navigation datum plane corresponding to the low water flow during a 10-year period was established by the Army Engineers following a careful resurvey of the river, and the river depth over an average channel width of 60 feet was referenced to this datum plane. Soundings were taken disclosing that in the 145-mile stretch from Milledgeville to the Forks there were only 6.7 miles which had a depth of less than 3 feet below the low-water reference plane, 5 miles thereof being in the 39-mile stretch between Milledgeville and the Central of Georgia Railroad bridge.

While petitioner attempted to disparage the use made of the river for navigation between Milledgeville and Dublin (located about half way between Milledgeville and the mouth of the Oconee river), the most that the evidence revealed was that a greater use was made of the Oconee below Dublin than above. The Commission found nothing in the record that would justify the conclusion that the river was navigable below Dublin and nonnavigable above that point; to the contrary, it found that the physical and hydraulic characteristics of the two sections were not essentially different. With respect to the past history of the river the Commission, 53 PUR(NS) 177, 180, 181, said:

"In the year 1803, some thirty seven years before the first railroad was completed in Georgia, and when transportation by wagon and stagecoach over the poor roads of that period was slow and difficult, the state legislature located the town of Milledgeville 'at or near the head of navigation on the Oconee river.'

"In December, 1804, the legislature agreed to and approved of the town site, as theretofore fixed upon and laid off pursuant to the act of May 11, 1803, and declared the town of Milledgeville 'to be the permanent seat of government of this state.' Milledgeville was the capital of Georgia for sixty-three years, from 1804 to 1867. That the advantage of water transportation was one of the controlling considerations in the location of the state

capital on the Oconee river can hardly be gainsaid.

"The state of Georgia spent some $45,000 for navigation improvements above Dublin, and private navigation companies also participated in the improvement of the river. By the time Congress commenced appropriating money for improvement of the river (June 18, 1878), railroads had been constructed and channels of commerce were fairly well established in the region.

"The influence of shipping points and established transportation routes upon development of the Oconee river as a navigation route is evidenced by he emphasis placed upon improvement of the section of the river between Dublin and the Central of Georgia Railroad bridge, some 29 miles upstream. However, for more than fifty years Congress has consistently treated the entire river below Milledgeville as navigable and as susceptible of increased navigation use. Furthermore, the many reports submitted to Congress by the Corps of Engineers, U. S. Army, present the views of these navigation experts to the effect that the river is suitable for navigation use up to Milledgeville, and such reports contain impressive records of the volume of commerce which has been handled not only on the Oconee river but also on the Altamaha. In addition to use by steamboats and other craft, the record shows that the river has been used for rafting.

"Declarant regards the present lack of commerce and alleged lack of prospects for profitable commerce on the Oconee river as indicative of conditions preventing navigation, but neither lack of commercial traffic nor unprofitable traffic operations is controlling as to navigability. On the basis of the long record of actual use, the assertion of jurisdiction by Congress during the past sixty-six years, and more particularly during the past fifty-four years, and the testimony as to suitability of the river for navigation, we hold that the Oconee river is navigable from Milledgeville to its mouth, and that the Oconee and Altamaha rivers form a navigable water of the United States from Milledgeville to the sea, over which persons and property can be and have been carried in interstate commerce."

The project which petitioner proposed to construct will consist of a dam about 100 feet high across the Oconee river, 4.3 miles upstream from Milledgeville; a hydroelectric power plant at the dam, with two generating units of equal capacity to operate under a maximum power head of 92 feet; and a reservoir with a gross capacity of 294,000 acre-feet and a usable capacity of about 208,000 acre-feet, which when full would extend upstream some 25 miles and flood 15,000 acres of land. To operate its plant petitioner proposed to install two hydroelectric turbines, each with a discharge capacity of 3,600 cubic feet per second, the turbines to operate singly or simultaneously, according to power demand and available storage, and the rate of the inflow into the reservoir. The average flow of the river at Milledgeville is approximately 3,600 cubic feet per second, and the flow exceeds 1,400 cubic feet per second more than three quarters of the time. Boats of light draft, according to the evidence, can operate below Milledgeville when the flow is less than 1,400 cubic feet

per second, but the flow most useful to that type of navigation and best adapted to the river ranges upward from 1,400 cubic feet per second to an average flow at Milledgeville of 3,600 cubic feet per second.

In its declaration of intention petitioner set forth that it intended to operate its power plant as a storage hydroelectric development, and the Commission found that the power load to be carried by the plant, and consequently the discharge from the turbines, would vary through a very wide range. It also found that during the periods of low and moderate flow, such as generally occurred during the summer and autumn of each year, the flow in the river immediately below the dam would be reduced to 250 cubic feet per second for eight hours each week-day from Monday to Friday, inclusive, and to an average of 500 cubic feet per second during the 56-hour week-end period; that on week-days the flow immediately below the dam would range from a minimum of 250 cubic feet per second to a maximum possibly as high as 7,200 cubic feet per second; and as a result major variations would occur in the stage and navigable depths available for any kind of useful navigation below Milledgeville; that the draft of boats operating on the river ranged from 16 inches to 3.5 feet; and that the intermittent discharge and the restrictions in discharge would adversely affect the navigable capacity of the river from Milledgeville to Dublin, at times would render impossible any navigation around Milledgeville, and during certain seasons would seriously interfere with navigation at, above, and below Dublin.

A careful reading of the record discloses that the Commission's findings are supported by substantial evidence; in such circumstances we may not disturb them.

[4] Petitioner, however, urges that while there has been some navigation by light draft boats at times in the past on the Oconee river as far as Milledgeville, the evidence as a whole leads inevitably to the conclusion that the Oconee river above Dublin in its natural state is nonnavigable, and that this has been its history down through the years. Petitioner urges that the test to be applied with respect to navigability is that laid down by the Supreme Court in Re The Daniel Ball (1871) 77 US 557, 19 L ed 999, 1001, in which it was stated:

". . . Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water. And they constitute navigable waters of the United States within the meaning of the acts of Congress, in contradistinction from the navigable waters of the states, when they form in their ordinary conditions by themselves, or by uniting with other waters, a continued highway over which commerce is or may be carried on with other states or foreign countries in the customary modes in which such commerce is conducted by water."

The test laid down in The Daniel Ball Case was generally adhered to by the Supreme Court until the decision

in United States v. Appalachian Electric Power Co. (1940) 311 US 377, 85 L ed 243, 36 PUR(NS) 129, 61 S Ct 291, in which the court gave the term "navigable waters" in the Federal Power Act a broader construction than that laid down in The Daniel Ball Case, *supra*, and in decisions that followed it. In the Appalachian Electric Power Co. Case, the court had under consideration the Federal Power Act which defined navigable waters in these words:

". . . . 'navigable waters' means those parts of streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several states and which either in their natural or improved condition notwithstanding interruptions between the navigable parts of such streams or waters by falls, shallows, or rapids compelling land carriage, are used or suitable for use for the transportation of persons or property in interstate or foreign commerce, including therein all such interrupting falls, shallows, or rapids, together with such other parts of streams as shall have been authorized by Congress for improvement by the United States or shall have been recommended to Congress for such improvement after investigation under its authority." Section 3(8), 16 USCA § 796(8).

And referring to the test laid down in The Daniel Ball Case *supra*, the court, 311 US at pp 406–410, 36 PUR (NS) at pp 136-138, said:

"In the lower courts and here, the government urges that the phrase 'susceptible of being used, in their ordinary condition,' in The Daniel Ball definition, should not be construed as eliminating the possibility of determining navigability in the light of the effect of reasonable improvements. The district court thought the argument inapplicable.

"The circuit court of appeals said: 'If this stretch of the river was not navigable in fact in its unimproved condition, it is not to be considered navigable merely because it might have been made navigable by improvements which were not in fact made. Of course if the improvements had been made the question of fact might have been different.

"To appraise the evidence of navigability on the natural condition only of the waterway is erroneous. Its availability for navigation must also be considered. 'Natural and ordinary condition' refers to volume of water, the gradients and the regularity of the flow. A waterway, otherwise suitable for navigation, is not barred from that classification merely because artificial aids must make the highway suitable for use before commercial navigation may be undertaken. Congress has recognized this in § 3(8) of the Water Power Act, 16 USCA § 796(8), by defining 'navigable waters' as those 'which either in their natural or improved condition' are used or suitable for use. . . . The power of Congress over commerce is not to be hampered because of the necessity for reasonable improvements to make an interstate waterway available for traffic.

". . . . 'The plenary Federal power over commerce must be able to develop with the needs of that commerce which is the reason for its existence. It cannot properly be said that the Federal power over navigation is enlarged by the improvements

to the waterways. It is merely that improvements make applicable to certain waterways the existing power over commerce. In determining the navigable character of the New river it is proper to consider the feasibility of interstate use after reasonable improvements which might be made.

" 'Nor is it necessary for navigability that the use should be continuous. The character of the region, its products and the difficulties or dangers of the navigation influence the regularity and extent of the use. Small traffic compared to the available commerce of the region is sufficient. Even absence of use over long periods of years, because of changed conditions, the coming of the railroad or improved highways does not affect the navigability of rivers in the constitutional sense. . . .' "

A comparison of the evidence concerning the navigability of New river, before the court in the Appalachian Electric Power Co. Case and the evidence before us here is most revealing. The Oconee has a greater volume of water; its fall per mile is less; it is virtually free of shoals; and the navigation over it in the past has been more frequent and in far greater volume. If, therefore, New river was feasible for interstate use after reasonable improvements which might be made, the evidence before us fully establishes that the Oconee must also be feasible for such navigation. The evidence also establishes that the intermittent releases of water in operating the proposed hydroelectric power plant will at intervals retard the flow below the dam site, thus causing a fall in the water levels to such a degree as to affect adversely navigability in the Oconee river at and below Milledgeville, as far south as Dublin.

[5] The contention that the jurisdiction of the Commission under the Federal Power Act is limited to the navigable waters of a stream ignores that portion of § 23(b) of the act, 16 USCA § 817, providing that: "Any person, association, corporation, state, or municipality intending to construct a dam or other project works across, along, over, or in any stream or part thereof, other than those defined in this chapter as navigable waters, and over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several states shall before such construction file declaration of such intention with the Commission, whereupon the Commission shall cause immediate investigation of such proposed construction to be made, and if upon investigation it shall find that the interests of interstate or foreign commerce would be affected by such proposed construction, such person, association, corporation, state, or municipality shall not construct, maintain, or operate such dam or other project works until it shall have applied for and shall have received a license under the provisions of the act. . . ."

We fully agree with the fourth circuit that: "One of the purposes of the Water Power Act was to authorize the Commission to license dams in navigable waters of the United States in lieu of an act of Congress; and in our opinion one of the purposes of § 23 . . . was to likewise take care of the case of a proposed structure in a nonnavigable tributary of an interstate navigable stream." United States v. Appalachian Electric Power

Co. (1939) 31 PUR(NS) 65, 100, 107 F2d 769, 795.

[6–8] That Congress has the power to legislate where commerce between the states or with foreign countries may be affected is no longer an open question. And such power is not restricted to "an adverse effect upon the present and existing navigable capacity of Federal waters"; it extends to navigable capacity after reasonable improvements which might be made, and whether the effect is beneficial or injurious. The Federal Power Act was intended to develop, conserve, and utilize the navigation and water-power resources of the country, and to that end requires that projects licensed shall "be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce," hence, "if upon investigation it (the Commission) shall find that the interests of interstate or foreign commerce would be affected," it may require a license.

We agree with the Commission that the Altamaha river and the Oconee river below Milledgeville are navigable waters of the United States within the meaning of the Federal Power Act, and that the operations of the proposed project would affect adversely navigation thereon.

The question with respect to the applicability and constitutionality of the Federal Power Act with respect to petitioner's project located above navigation on the Oconee river, we think has been disposed of in the affirmative by the Supreme Court in United States v. Appalachian Electric Power Co. *supra*, and in Oklahoma ex rel Phillips v. Atkinson Co. (1941) 313 US 508, 85 L ed 1487, 61 S Ct 1050; United States v. Chandler-Dunbar Water Power Co. (1913) 229 US 53, 57 L ed 1063, 33 S Ct 667; Fox River Paper Co. v. Railroad Commission (1927) 274 US 651, 71 L ed 1279, 47 S Ct 669.

The order of the Commission is affirmed.

ILLINOIS COMMERCE COMMISSION

Re North Shore Gas Company

No. 33264
January 8, 1946

APPLICATION *for authority to change from manufactured gas to natural gas service, for approval of revised rate schedules, and for authority to amortize cost of coke oven gas plant; granted subject to conditions.*

Service, § 254 — Gas — Substitution of natural gas.

1. A company furnishing manufactured gas service should be authorized to change its entire system to service by natural gas, under lower rate

schedules, where its gas plant is inadequate, the cost of coal has increased, and an adequate supply of natural gas will become available, p. 151.

Accounting, § 14 — Amortization of gas plant — Change to natural gas.

2. A company which is authorized to change from manufactured gas service to natural gas service should be authorized to amortize its present coke oven plant where the plant is unsuitable for use as a standby reserve, jurisdiction being reserved for the purpose of directing further details with respect to amortization, p. 151.

By the COMMISSION: On November 8, 1945, the North Shore Gas Company filed its petition in the above-entitled matter. On December 4, 1945, an amendment to the said petition was filed. Pursuant to due notice as required by law and by the rules and regulations of the Commission, hearings were held at the offices of the Commission in Chicago on November 28, 1945, and on December 7, 1945. At the said hearings petitioner was represented by counsel and appearances were also entered on behalf of the cities and villages of North Chicago, Lake Bluff, Lake Forest, Winnetka, and Glencoe. The Zion Industries, Inc., was granted leave to intervene in the said proceedings and appeared at the said hearings.

The application as amended seeks authorization of this Commission to change the type and heating value of the gas distributed by petitioner in certain cities and villages served by it, the approval of revised and reduced rate schedules, the authorization of abandonment of the operation of petitioner's coke oven plant, and amortization of the said plant, and for a certificate of convenience and necessity to construct, operate and maintain a certain 12-inch gas distribution main for the enlargement of petitioner's gas distribution system.

[1, 2] The proposal of the petitioner in brief is to change over its entire system from service by manufactured gas to service by natural gas. The manufactured gas now supplied to consumers is obtained mainly from a coke oven gas plant located in Waukegan. This plant, as shown by the evidence, has become inadequate to supply the needs of the public in the territory. The coal used to produce this gas is West Virginia coal and the cost of that coal has increased from $3.48 per ton (into the ovens) in 1933 to $6.09 per ton in 1945. The petitioner has been unable to attach new and additional customers since 1942 and in the year 1942 had a serious interruption of supply. An adequate supply of natural gas will become available to the petitioner if certain authorities are granted in a proceeding now pending before the Federal Power Commission, and the proposal of the petitioner in the case now before the Illinois Commerce Commission is contingent upon the outcome of said proceedings before the Federal Power Commission. The petitioner proposes in the event that the change-over to natural gas is made, to file new rate schedules which will represent a substantial saving to customers as compared with the present rates for service by manufactured gas, and also proposes to bear the expense of adjusting

customers' appliances to permit the use of natural gas.

The Commission has received communications from the following cities and villages, some in the form of resolutions and others in more informal manner, but all approving the proposed change-over and suggesting favorable and speedy action by the Commission; Deerfield, Grays Lake, Highland Park, Lake Bluff, Lake Forest, Libertyville, Mundelein, Waukegan, Winnetka, Winthrop Harbor, and Zion. No representations have been made to the Commission in opposition to the said plan either by municipalities or any other parties. The city of Lake Forest presented a witness whose testimony supports the proposal of the petitioner.

There appears to be urgency with respect to the change-over to natural gas, primarily in order that adequate gas service be rendered to the public in this territory but also in order that the public receive the benefit of the lower rates. In view of this fact the Commission will enter its order at the present time with respect to the matter of change-over, rates, and certificate of convenience and necessity, and will also authorize the amortization of the Waukegan coke oven plant but will reserve jurisdiction for the purpose of directing further details with respect to the said amortization. In this connection it may be pointed out that the Waukegan coke oven plant is unsuitable for use as a standby reserve for the reason that a coke oven plant cannot be put into service quickly but requires a long period of warming up and, when out of service for a considerable length of time, may require considerable replacement of refractory brick or other material before the plant can again be placed in operation. This explanation is made for the reason that some suggestions have been made in connection with this proceeding that the said plant be retained for standby purposes.

The Commission having considered the aforesaid petition as amended and all of the evidence, both oral and documentary, the statements of counsel and others who have entered appearance, and being fully advised in the premises, is of the opinion and finds:

(1) that the North Shore Gas Company, petitioner, is a corporation duly organized and existing under the laws of the state of Illinois and is engaged with charter powers so to do in the manufacture, distribution, and sale of gas to the public in various municipalities and communities in Cook and Lake counties in the state of Illinois, and is a public utility within the meaning of "An act concerning public utilities," as amended;

(2) that petitioner is now furnishing to the public in the said territory manufactured gas having an average heating value where it is produced of approximately 565 BTU per cubic foot and that the said gas is so distributed in and about the cities and villages of Bannockburn, Deerfield, Glencoe, Grays Lake, Gurnee, Highland Park, Highwood, Lake Bluff, Lake Forest, Libertyville, Mundelein, North Chicago, Russell, Thornbury, Waukegan, Winnetka, Winthrop Harbor, and Zion;

(3) that, contingent on the outcome of certain proceedings now pending before the Federal Power Commission, petitioner will have available for distribution to the public in substi-

tution for the said manufactured gas, an adequate supply of natural gas and that petitioner proposes the distribution and sale to the public of straight natural gas having a heating value of approximately 1,000 BTU per cubic foot;

(4) that the schedule of rates for natural gas service which petitioner proposes to make effective in each of the cities and villages specified and in their environs, will result in an average over-all saving to the present customers of petitioner of approximately 13.8 per cent and will not result in increasing the bills of any of the present customers;

(5) that the proposed change in heating value of gas through the proposed change-over will result in a material increase in the capacity of petitioner's storage, transmission and distribution system and facilities by reason of the increased thermal content of the gas, and that both by reason of the said increased thermal content of the gas and by reason of the change in source of supply and by reason of new construction pursuant to the certificate of convenience and necessity herein authorized the ability of the petitioner to render adequate gas service to the public will be greatly increased;

(6) that in connection with the aforesaid change-over it will be necessary to make certain adjustments in consumers' gas burning appliances and that petitioner should at its own expense as soon as it starts the distribution of straight natural gas in the aforesaid communities proceed with reasonable dispatch to make, or cause to be made, necessary and appropriate adjustments or changes in consumers' gas burning appliances, all to the end that the said appliances be arranged to utilize with reasonable efficiency natural gas having a thermal content of approximately 1,000 BTU per cubic foot;

(7) that the coke oven plant of the petitioner located in Waukegan is not suitable for use as a standby reserve and that the petitioner should be authorized to discontinue the operation of the said plant at the time of the change-over from manufactured to natural gas, and with respect to the amortization of the said plant the Commission will issue its further and supplemental order prescribing the manner and details of the said amortization;

(8) that petitioner should be authorized to discontinue the supplying of manufactured gas in the cities and villages above specified and in their environs and to substitute in lieu thereof straight natural gas having a heating value of approximately 1,000 BTU per cubic foot and to file and make effective a schedule of rates covering natural gas in the form of petitioner's Exhibits 2 and 2-A as filed in this proceeding, such schedule to become effective for each of the said cities and villages and their environs upon the substitution therein of the proposed natural gas service for the present manufactured gas service, which schedules shall thereupon supersede and cancel the petitioner's existing schedules for manufactured gas service in the said communities;

(9) that in connection with the change from manufactured to natural gas service it will be necessary for petitioner to enlarge its present distribution system and to construct,

operate, and maintain a 12-inch gas distribution main from a point just southeast of the town of Grays Lake, Lake county, Illinois, to run in a general easterly direction through the petitioner's service territory connecting with existing gas mains running north and south, and to construct such distribution main along the route generally described as follows:

Commencing on the south side of the unimproved road known as Peterson road at approximately the northwest corner of the southwest quarter of section 7, township 44 north, range 11, east of the third principal meridian, county of lake, state of Illinois, and extending eastwardly approximately 3,160 feet on said Peterson road right of way through the above-mentioned section 7, township 44 north, range 11, east of the third principal meridian, to the intersection of Peterson road with Milwaukee road (state route 21), thence continuing eastwardly approximately 8,700 feet along south side of said Milwaukee road right of way to the intersection of Milwaukee road with state route 63 and Buckley road (state route 20), thence eastwardly approximately 19,475 feet on the south side of Buckley road right of way to the intersection of Buckley road with Telegraph road (state route 42-A), thence approximately 8,275 feet on the south side of Buckley road right of way to the intersection of Buckley road and Green Bay and Downey roads, said intersection known as Five Points, and thence eastwardly approximately 5,000 feet on Downey road to Sheridan road (state route 42) in the northwest quarter of section 9, township 44 north, range 12, east of the third principal meridian.

(10) that it may be necessary for petitioner to use an alternate route in place of a portion of the above route, the above route and the alternate route having been approved by the state highway department and the use of an alternate route being dependent upon certain improvements to be made by the state of Illinois highway department, said alternate route to conform with the above-described route only to the point mentioned on Buckley road at the intersection of Telegraph road (state route 42-A), northeast quarter of section 12, township 44 north, range 11, east of the third principal meridian, from which point the alternate plan is as follows: "To extend southwardly approximately 12,700 feet on Telegraph road to the intersection of Rockland road in the northwest quarter of section 19, township 44 north, range 12, east of the third principal meridian, and to extend north from above-mentioned point at Buckley road and Telegraph road one mile plus or minus on Telegraph road and thence eastwardly through a part of section 1, township 44 north, range 11, east of the third principal meridian, through sections 6, 5, and 4, township 44 north, range 12, east of the third principal meridian, into the city of North Chicago"; said route and alternate route being designated on the plat received in evidence as petitioner's Exhibit 9; and

(11) that a certificate of convenience and necessity should be granted to petitioner for the construction, operation, and maintenance of gas mains along the routes hereinabove specified.

MISSISSIPPI SUPREME COURT

Capital Electric Power Association

v.

W. B. Franks

No. 35976
— Miss —, 23 So2d 922
December 10, 1945

EN BANC. APPEAL *from court decree perpetuating a mandatory injunction requiring a power company to resume service; reversed.*

Payment, § 24 — Liability — Meter tampering.

1. An electric utility is entitled to payment for current according to a correct registration regardless of who was responsible for current being detoured around a meter, p. 158.

Service, § 213 — Damages suffered by denial — Nonpayment.

2. An electric utility is not liable for damages sustained by a consumer because of discontinuance of service for nonpayment where the right to discontinue under such circumstances is reserved in the contract, p. 158.

Injunction, § 32 — Restoration of service — Discontinuance for nonpayment.

3. A consumer may not compel restoration of service where, in accordance with the terms of a contract, service has been discontinued for nonpayment, p. 158.

Costs — Attorney's fees — Dissolution of injunction.

4. Attorney's fees are not recoverable for dissolution of injunction where injunction was merely an auxiliary to principal equitable relief sought and motion to dissolve was not heard in advance of trial on the merits, p. 159.

APPEARANCES: W. E. Gore and John G. Burkett, both of Jackson, for appellant; H. C. Stringer and L. L. Shelton, both of Jackson, for appellee.

McGEHEE, J.: This appeal is from a decree that perpetuated a mandatory injunction which required the appellant to resume the furnishing of electric current to the place of business and home of the appellee on U.S. Highway 51, about 12 miles south of the city of Jackson. The motion to dissolve the temporary injunction which had successfully compelled the service to be resumed was heard on bill of complaint, answer, cross bill, and oral proof at a final hearing.

The appellant is one of the many corporations engaged in this state in supplying electric current to its members, and not to the general public, under the authority of the Federal agency known as the Rural Electrical Authority, and it operates on a non-

profit basis. Each member of the association is required to pay a membership fee of $5, and to pay for such electric current as he may use. The rates are fixed by the association at such an amount as is deemed sufficient to take care of the annual instalments on a loan from the Federal government, interest and operating expenses, and each member agrees, as a condition of continued membership, that he will comply with the provisions of the charter and bylaws, and rules and regulations, of the association as to paying for such electric power as may be furnished to him, but a member is not in any manner personally liable for the debts of the association.

At the beginning of the contractual relations between the association and one of its members, their agreement is evidenced by a written contract whereby the member agrees to pay monthly the rates that are fixed by the board of directors, and that he will comply with the charter and bylaws of the association, and such rules and regulations as may from time to time be adopted by it. If the member complies with the terms of the contract in the foregoing particulars, the association is obligated to continue the electric service in force for one year, and thereafter until canceled by at least thirty days' written notice given by either party to the other. But, of course, the association is not obligated to furnish the service for the period of one year or longer unless the member shall have paid for the service rendered when the compensation therefor shall become due and payable. Aside from the provisions of such contract, one of which was entered into by the parties in the instant case, the association has stipulated in writing on each monthly bill rendered that it "Reserves the right to discontinue service at any time for nonpayment of arrears."

The proof on behalf of the appellant shows that on June 7, 1944, the appellee moved into the place of business and residence formerly occupied by one Itell at the location hereinbefore mentioned. Thereupon, a meter was installed to register the electric current to be furnished to him and there was begun the contractual relation hereinabove set forth. Electric current was thereafter supplied to the store, filling station, and residence of the appellee.

On or about July 15, 1944, the meter was read by an employee of the association for the period ending on that date, and the reading disclosed that only 35 kilowatts had been used, although a normal use under the circumstances would have been approximately five times that amount. At the time of the reading of said meter, the employee of the association discovered that the same was not then registering although it was in good condition and the lights were burning; that upon throwing the switch, which should have cut off the lights, they continued to burn; that thereupon an employee of the appellee pointed out to the meter reader where the line had been tapped so as to detour the current around the meter; that the inside wall of the building had been newly painted and that there were dirty finger smudges on the paint around a bracket under which the device was later found to have been connected; that this employee of the association did not then make an examination but reported it to his general manager,

and that the general manager visited the appellee's place of business and ascertained the manner in which the current was being detoured around the meter; that he did not remove this contrivance, which is referred to in the evidence as "jumper," for the reason that it could be readily reinstalled by anyone desiring to do so; that the general manager thereupon caused a check meter to be installed on a pole off the premises of the appellee; and that on July 19, 1944, the general manager wrote to the appellee the following letter: "We enclose our bill covering estimated unauthorized service which you received during the period closing July 15, 1944. This service was tapped before being metered, and was inspected by the writer. We have set a check meter on this service, and your billing hereafter will be as per reading on this meter. It will be necessary for you to make payment on this enclosed bill, or your service will be discontinued."

That upon receipt of the foregoing letter, the appellee paid this $5 extra charge, and continued to pay each month the bills rendered according to the check meter until March 15, 1945, knowing that in the meantime the employees of the association were not reading the meter on the wall inside his place of business, and thereby acquiesced in, and ratified the action of, the association in charging for the current furnished as registered by the check meter.

That upon receipt by the appellee of the bill for the month beginning February 15 and ending March 15, 1945, and which was for an amount much in excess of previous bills, due to the fact that during February the appellee had installed several chicken brooders in which he was supplying the necessary heat to approximately 1,500 little chickens, he refused to pay the bill for that period, complaining that the check meter was registering more than the meter on the wall in his place of business by a difference of about 300 kilowatts. That thereupon the general manager of the association caused the check meter to be reread to ascertain if any mistake had been made and found it to be registering correctly. That the appellee still declined to pay the bill after consulting his attorney in regard thereto. That thereupon the general manager went to the appellee's place of business and gave him the choice of either paying the bill or having the service discontinued. Appellee continued such refusal to pay, and with the result that the service was discontinued on March 29, 1945.

That shortly thereafter the temporary mandatory injunction was issued whereby the association was commanded and required to reinstate the service and to install a meter on the premises of the appellee. That this was promptly done, and with the result that for a period of time thereafter this new meter, which was accessible to the appellee, registered only the use of 49 kilowatts of power, whereas it should have shown to register several hundred, according to the check meter which was shown without dispute to be giving a correct registration. That thereupon the general manager moved the new meter to another place on the premises of the appellee, but where it was no longer accessible to him, when it began to register the correct amount in accordance

with the registration on the check meter.

The foregoing proof on behalf of the appellant was disputed by the testimony on behalf of the appellee to the extent that his employee denied having pointed out to the representative of the association the place where the line was being tapped and the current detoured around the meter, and to the further extent that the appellee denied any responsibility in connection with this contrivance, and said that the meter on the wall in his place of business was registering at all times whenever he looked at it, and claimed that although the main line had been uninsulated in two places and then the exposed ends of some small wires had been connected thereto, he removed the same when he took possession of the building. However, he did not call this attempt of some one to tap the wires to the attention of the association at the time the meter was first installed.

He also denied having received the letter from the association hereinbefore quoted, but he later admitted receiving a letter, which he did not produce, in connection with the bill for the extra charge of $5 mentioned in the quoted letter.

[1–3] Under our view of the case, the appellant was entitled to require payment for the current according to a correct registration without regard to who was responsible for the current being detoured around the meter which was on the wall in the store building, since it appears to have been conclusively shown that for some reason the association could not get a correct registration of the current while either this meter or the one installed under the writ of injunction was accessible to whoever was interfering with the wiring on the premises.

It was not until after the temporary mandatory injunction was obtained that the appellee made a tender, either legal or otherwise, of the amount that he admitted or claimed to be acutally due. At any rate, we are of the opinion that the mandatory injunction should have been dissolved and that a decree should be rendered here accordingly.

The decree of the trial court erroneously relieves the appellee of paying any amount for the current used by him from February 15 to March 15, 1945. Up to the date of the trial the proof discloses that the appellee owed the sum of $70.14, and the correctness of the claim of the appellant for actual damages other than its claim for attorney's fees upon a dissolution of the injunction, and amounting to the total sum of $130.94, including the $70.14 demanded, is not disputed, except as to that part of the $70.14 which was in dispute when the suit was filed.

From the foregoing conclusions it follows that the appellant is entitled to a decree here dissolving the injunction, and an award of $130.14 for current furnished, and as damages sustained to the date of the trial. That the appellee is not entitled to relief under his cross-appeal, for the reason that any damages that he may have sustained in the loss of chickens and the operation of his business due to the heat and lights being discontinued, on account of the nonpayment of a past due bill for current furnished him is not recoverable, since the defendant association reserved the right to take such action under these circumstances.

[4] No attorney's fees are recoverable by the appellant, for the reason that the suit was one both for injunctive relief and the recovery of damages on account of the alleged loss of several hundred of the young chickens, and interference with the operation of the store and filling station, and the motion to dissolve the injunction was not heard in advance of the trial on the merits, the record showing that the entire cause was heard on the merits and that the same was treated as a final hearing. "It is thoroughly settled that, under the general statutes—other than those fixing the 5 per centum as damages—solicitors' fees are allowable as part of the damages for procuring the dissolution of an injunction; but such fees are not allowable for defending the suit on its merits when the injunction was a mere incident thereto, or for obtaining affirmative relief therein by means of a cross bill. If the suit be for an injunction alone and for no other relief solicitor's fees for dissolution must be allowed, but where the injunction is sued out merely in aid of or as auxiliary to the principal equitable relief sought, and the entire case is heard finally, and not separately on any preliminary motion to dissolve, solicitor's fees should not be allowed."

Reversed and judgment here for the appellant on direct appeal; affirmed on cross-appeal.

NEW YORK SUPREME COURT, SPECIAL TERM, BROOME COUNTY

G. Doyle Bartholomew

v.

Village of Endicott et al.

— Misc —, 59 NYS2d 84
December 14, 1945

MOTION *to dismiss complaint for insufficiency in a taxpayer's action to prevent village from entering into contract to purchase electricity; motion denied as to first cause of action and granted as to other causes. See also (1945) — Misc —, 62 PUR(NS) post, p. 163, 59 NYS2d 89.*

Municipalities, § 9 — Taxpayer's action — Legality of contract — Purchase of electricity.

1. The question involved in a taxpayer's action to prevent a municipality from contracting to buy electricity is not whether the contract is the best that could be made but whether it is legal, since in the former field the discretion and judgment of the municipal board is supreme, while in the latter field it has no choice, p. 161.

Municipal plants, § 17 — Public benefit — Limitation by contract — Illegal official act.

2. The power to establish and operate public utility service is for the public benefit and legislative in character, and any attempt by contract to limit or curtail its exercise constitutes an illegal official act, p. 161.

Municipal plants, § 20 — Validity of contract for power — Restriction on operation.

3. A clause, in a contract by a municipality for the purchase of electricity from an electric company, limiting the right of the municipality to operate or expand its public utility service, is not merely illegal, but also a peril to public rights and interests, p. 161.

Municipalities, § 9 — Contract ambiguity — Illegal official act.

4. Ambiguity or indefiniteness in a power contract between a municipality and an electric company is not sufficient to characterize such contract an illegal official act or waste of public property, p. 162.

Municipalities, § 9 — Purchase of electricity — Public works.

5. A contract for the purchase of electricity by a municipality from an electric utility is not a contract relating to public works, p. 162.

Pleading, § 12 — Motion to dismiss.

6. The facts alleged in the complaint are all that may be considered in deciding a motion to dismiss for failure to allege facts sufficient to constitute a cause of action, p. 162.

Municipal plants, § 26 — Taxpayer's action to prevent contract — Pleading.

7. Allegations that petitions are being circulated for the extension of a municipal plant are too speculative to constitute a cause of action, in a taxpayer's action to prevent the municipality from entering into a supply contract which contains a limitation on the municipal right to enlarge its electric system, because of the remoteness between the circulation of the petitions and the actual extension of the system, p. 162.

Courts, § 4 — Jurisdiction — Legislative policy.

Recognition of rule that courts are without jurisdiction over questions of legislative policy or administrative discretion, p. 161.

Service, § 129 — Duty to serve competitor.

Recognition of rule that an electric company cannot be compelled to sell energy to a municipality to be used in competition with it, p. 161.

APPEARANCES: Leonhardt W. Wagner, of Endicott, for the village; Thomas A. MacClary, of Endicott, for defendants other than village of Endicott, in support of the motion; Richard A. Battaglini, of Woodside, for plaintiff, in opposition; Keenan, Harrison & Coughlin, of Binghamton (Neil G. Harrison, of Binghamton, counsel present), amicus curiae.

DEYO, J.: This is a taxpayer's action brought pursuant to § 51 of the General Municipal Law. This section permits such an action "to prevent any illegal official act . . . or to prevent waste . . ." The question involved is the anticipated signing by the defendants of a new contract for electric current for village purposes and for re-sale by the village through

its own municipal distribution system which at present serves only a portion of the village.

[1–3] The first cause of action is based upon a clause in the proposed contract whereby the defendants agree that the village shall "confine its electric operations and sales to that portion of the village" already being served by the municipal system. In other words, it is suggested that the village agree not to extend, increase or enlarge its present system. It is alleged that any such agreement is illegal in that, among other things, it constitutes an attempt on the part of the board of trustees to contract away the rights of the village, and hence would curtail and deprive the board and its successors of the power to perform their public functions.

I am fully in accord with the defendants' argument that a court will not and must not sit in judgment upon questions of legislative policy or administrative discretion. Campbell v. New York (1927) 244 NY 317, 328, 155 NE 628, 631, 50 ALR 1473. I am equally in agreement with the contention that the electric company with whom the contract is to be made should not and cannot be compelled to sell energy to the village to be used in competition against it. People ex rel. New York Edison Co. v. Public Service Commission, 191 App Div 237, 245, PUR1920C 526, 181 NYS 259, 265, affirmed (1920) 230 NY 574, 130 NE 899; New York State Electric & Gas Corp. v. Endicott (Sup. Ct. Otsego Co., Nov. 9, 1940, McNaught, J., not reported). However, these are not the questions which are raised by the first cause of action, as I read it. The allegations are that the restraining clause whereby the village would agree "to confine its electrical operations and sales" contracts away the right of this and any future village administration from augmenting, increasing, enlarging, or extending in any way its present municipal light system for the duration of the agreement. The question is not whether this is the best contract, but whether it is a legal contract. In the former field, the discretion and judgment of the board is supreme, in the latter field they have no choice.

Article 14–A of the General Municipal Law and Art. 10 of the Village Law grant to municipal corporations the right to establish, own, operate, and extend public utility services. Under the clause in question, neither these defendants nor their successors could do what the law specifically authorizes them to do. Contracts may not be made limiting the exercise of such rights. The power to establish and operate public utility services is for the public benefit and is legislative in character. Its exercise cannot be limited or curtailed by contract. (Wells v. East Aurora [1932] 236 App Div 474, 259 NYS 598; Belden v. Niagara Falls [1930] 230 App Div 601, 245 NYS 510), and any attempt to do so constitutes an "illegal official act."

I am not unmindful of the line of decisions holding that mere illegality is not enough to justify a taxpayer's action under § 51 of the General Municipal Law. Western New York Water Co. v. Buffalo (1926) 242 NY 202, 151 NE 207; Altschul v. Ludwig (1916) 216 NY 459, 111 NE 216. In the instant case, however, something more than mere illegality

is involved. The threatened illegal official act would deprive the village of the right to enlarge its municipal light system should the time come when it deemed such enlargement advisable. Therefore, the threatened illegal act is not trivial and innocuous, but rather, one which imperils public rights and interests.

I do not base my decision on the plaintiff's argument that the restraining clause constitutes a restraint of trade or a gratuity to the electric company or anyone else. Obviously, it is part of the proposed bargain and from all that appears is supported by ample consideration. The objection as I see it, is that regardless of consideration and regardless of intention or motives, this particular clause denies to the village and to future village boards rights and prerogatives which the law says they may exercise. As was said in Parfitt v. Ferguson (1896) 3 App Div 176, 182, 38 NYS 466, 470, affirmed (1899) 159 NY 111, 53 NE 707: "It is too plain to require argument that the members of the board could not enter into a contract not to perform any of the duties which the law devolved upon them, nor could the board, as it existed in 1889, do any act that would deprive another board from exercising any of the powers delegated to it by the statute. Any attempt to curtail or deprive themselves or any of their successors of the right or power to perform their public functions would be against public policy, and void."

Nothing contained herein is contrary to the late Justice McNaught's decision already referred to, since in that case the learned justice specifically stated that in view of a certain stipulation between the parties he was limiting his decision to whether or not the contract was then in force, and if so, whether the village had the right to sell current furnished thereunder outside of the restricted area. The legality of any clause similar to the one herein involved was neither mentioned nor determined.

[4] I find no merit in the allegations constituting the second cause of action. The provisions of the contract therein attacked as vague, indefinite, and uncertain as to time, clearly state that either party may limit the duration of the agreement to the 5-year minimum by giving the required notice. In any event, even if ambiguity were present, that in itself would not constitute an illegal official act or waste of public property, within the intent and meaning of § 51 of the General Municipal Law. Campbell v. New York, *supra*.

[5, 6] Similarly, the allegations constituting the third cause of action are insufficient as a matter of law. It requires a much more vivid imagination than I possess to interpret the contract under consideration as one relating to public works, and hence within the purview of § 15 of the Public Works Law. Technically, this cause of action is also faulty in that the complaint, and it is the complaint alone that may be considered, does not allege that the "public work" to be performed is in excess of $2,500.

[7] As a fourth cause of action the plaintiff alleges that a petition is being circulated asking for a referendum on the proposition of the extension of the municipal light system which, if had and approved, would commit the village to a program of expansion which

it could not undertake during the life of the contract. In view of my decision on the first cause of action, the plaintiff's fears become groundless. Standing alone, however, no cause of action is stated. The theory seems to be that if the petition is circulated, and if it is presented and if the referendum is held, and if it results favorably to the proposition, there would be conflict with the contract if that was also signed, which would result in a waste of public funds. Two more "ifs" should be added to complete the picture; if the village board should pay any attention to the petition, and if the same body should follow an affirmative vote on the proposition, for I know of no provision of law which commands the board to recognize either such petition or referendum. If the plaintiff has Art 10 of the Village Law in mind, I call his attention to the amendments made by Chap 710 of the Laws of 1943, effective September 2, 1945. In any event, the allegations are much too speculative to constitute a cause of action.

The allegations comprising the fifth cause of action at best merely reiterate the contention made under the first cause of action, namely, that any agreement on the part of the defendants to confine and circumscribe the electric activities of the village, constitute an illegal official act. Hence, this cause of action is but repetitious and will be dismissed.

To summarize, the motion to dismiss the complaint will be granted as to the second, third, fourth, and fifth causes of action, but will be denied as to the first cause of action on the grounds that any contract whereby the village board attempts to limit the right of the village to operate or expand its public utility service is an illegal official act within the intent and meaning of § 51 of the General Municipal Law.

Submit order in accordance with the foregoing.

NEW YORK SUPREME COURT, SPECIAL TERM, BROOME COUNTY

G. Doyle Bartholomew

v.

Village of Endicott et al.

— Misc —, 59 NYS2d 89
December 15, 1945

MOTION *for temporary injunction in a taxpayer's action to prevent municipal officials from entering into contract for purchase of electricity; motion granted. See also (1945) — Misc. —, 62 PUR(NS) ante, p. 159, 59 NYS2d 84.*

Injunction, § 38 — Damage during pendency of action.

1. A temporary injunction will issue where it appears from the complaint that the plaintiff is entitled to the final relief for which the action is brought, the papers show that the act sought to be restrained is unlawful, and continuation of such acts during the pendency of litigation will injure the plaintiff, although the granting or withholding of a temporary injunction usually rests in the discretion of the court, p. 164.

Injunction, § 37 — Temporary — Taxpayers' actions.

2. Temporary injunctions are allowed in taxpayers' actions against municipalities unless it clearly appears from the complaint that the plaintiff is not entitled to the ultimate relief which he seeks, p. 165.

Injunction, § 38 — Temporary — Taxpayer's action — Damage to taxpayer.

3. Damage to the plaintiff as an individual need not be shown on a taxpayer's motion for a temporary injunction against a municipality where the official act complained of is illegal, p. 165.

Injunction, § 41 — Scope — Restraint on illegal contract.

4. A temporary injunction, granted in a taxpayer's action to prevent municipal officials from contracting away the right to extend electric service, is effective only as a limitation on municipal contracts possessing "restraint of extension" clause and does not affect the officials' right to make any legal contract for the purchase of electricity, p. 165.

APPEARANCES: Richard A. Battaglini, of Woodside, for plaintiff, in support of the motion; Leonardt W. Wagner, of Endicott, for the village; Thomas A. MacClary, of Endicott, for individual defendants, in opposition thereto; Keenan, Harrison & Coughlin, of Binghamton (Neil G. Harrison, of Binghamton, counsel present), amicus curiae.

DEYO, J.: This is a taxpayer's action brought pursuant to § 51 of the General Municipal Law to prevent the defendants from entering into a certain contract for the purchase of electricity for municipal purposes and for resale through its own municipal distribution system. It is alleged that a clause in the proposed contract whereby the village agrees to "confine its electric operations and sales to that portion of the village" already served by the municipal system, constitutes an improper and unauthorized limitation upon this and future village administrations and is, therefore, an "illegal official act." The complaint has been held to state a cause of action in this regard. (1945) — Misc —, 62 PUR (NS) ante, p. 159, 59 NYS2d 84, Deyo, J. Now the question is whether a temporary injunction should be granted under § 877 of the Civil Practice Act, restraining the defendants from signing such contract pending the trial of the issues.

[1] Although the granting or withholding of a temporary injunction rests allegedly in the discretion of the court (Jenkins v. Marsh [1929] 225 App Div 401, 233 NYS 360), generally speaking, where it appears from the complaint that the plaintiff is entitled to the final relief, for which the action is brought; the papers show that the act sought to be restrained is unlawful and it is apparent that the

continuation of such acts during the pendency of the litigation will injure the plaintiff, a temporary injunction will issue. International R. Co. v. Barone (1935) 246 App Div 450, 454, 284 NYS 122, 127.

[2, 3] Temporary injunctions are permissible in taxpayers' actions brought pursuant to § 51 of the General Municipal Law, and will be sustained by the appellate courts unless it clearly appears from the complaint that the plaintiff is not entitled to the ultimate relief which he seeks. Rogers v. Board of Supervisors of Westchester County (1902) 77 App Div 501, 78 NYS 1081. In such cases damage to the plaintiff as an individual need not be shown where the official act complained of is illegal. Stockton v. Buffalo (1905) 108 App Div 170, 174, 95 NYS 509, 511; Brown v. Ward (1926) 127 Misc 89, 216 NYS 402, 406; Maloney v. Maddover (1912) 77 Misc 340, 343, 136 NYS 498, 500; Farley v. Lockport (1908) 61 Misc 417, 419, 113 NYS 702, 704.

[4] The motion for an injunction will be granted to the extent that the defendants, or any of them, will be restrained during the pendency of this action, from entering into any contract whereby they purport to agree to limit or confine the right of the village to operate or extend its public utility services. Nothing contained herein shall be construed, however, as preventing the defendants from entering into any contract they may deem advisable for the purchase and resale of electric current, including provisions calling for the exclusive use of such current in the area now served by the municipal system, and providing against the use of such current in competition with the seller, providing, however, the right to extend the existing village electric system is not interfered with.

Submit order in accordance with the foregoing.

SECURITIES AND EXCHANGE COMMISSION

Re Central States Utilities Corporation et al.

File Nos. 54-42, 54-69, 59-65, Release No. 6310
December 19, 1945

HEARING *on proposed amendment to holding company liquidation plan under § 11(e) of Holding Company Act; action of trial examiner in closing record overruled, maturity date of debentures extended, and jurisdiction to consider further matters reserved.*

Corporations, § 15.1 — Holding company liquidation — Participation in assets.

1. The questions of whether debentures and preferred stock owned by a

holding company are entitled to priority over publicly held preferred stock, or whether, on the basis of principles relating to fair and equitable plans of reorganization, the holding company's holdings in its subsidiary should be subordinated because of the manner in which the company's predecessor exercised control over the subsidiary, and because of the manner and circumstances of the creation of the debentures and of the acquisition of debentures and preferred stock by the holding company, are relevant to a full determination of what is fair and equitable treatment upon the liquidation of a subholding company under § 11(e) of the Holding Company Act, 15 USCA § 79k(e), where the assets are insufficient to pay the public preferred stockholders in full, p. 172.

Corporations, § 15.2 — Holding company liquidation — Right to hearing.

2. Preferred stockholders are entitled to an opportunity to bring about a more complete development of the record in a holding company liquidation proceeding under § 11(e) of the Holding Company Act, 15 USCA § 79k(e), and to adduce facts bearing on the treatment of nonsystem holders, where the assets of the holding company being liquidated are insufficient to pay public preferred stockholders in full, p. 172.

Security issues, § 9 — Debenture requirements — Extension of maturity date — Interest payments.

3. No interest should be paid upon debentures during the period covered by the extension of their maturity date, pending determination of issues relating to the right of debenture holders to payment of assets of a holding company being liquidated under § 11(e) of the Holding Company Act, 15 USCA § 79k(e), where the assets are insufficient to pay public preferred stockholders in full, but a proposal to hold in escrow the interest accruing on the debentures during that period may be approved, p. 173.

APPEARANCES: Simpson Thacher & Bartlett, by Douglas A. Calkins and Marshall A. Jacobs, for Ogden Corporation; Fred C. Eggerstedt, Jr., for Central States Power & Light Corporation; Mayer, Meyer, Austrian & Platt, by Millard B. Kennedy, for Continental Illinois National Bank & Trust Company of Chicago, Trustee for Central States Power & Light debentures; Levinson, Becker & Peebles, by Jesse J. Holland, for Central Life Insurance Company of Illinois; Russell M. Van Kirk, for J. S. Farlee & Co.; Wolf, Block, Schorr and Solis-Cohen, by Morris L. Forer, for certain preferred stockholders; Bell, Murdoch, Paxson & Dilworth, by Frank B. Murdoch, for Stewart D. Flanagan; Arthur Goldman, for the Public Utilities Division of the Commission.

By the COMMISSION: The questions now before us relate to two proposals filed as amendments to a plan under § 11(e) of the Public Utility Holding Company Act of 1935, 15 USCA § 79k(e), which we have heretofore approved and which provides, inter alia, for the liquidation of Central States Power & Light Corporation ("Central States").[1] Central States is a subsidiary of Central States Utilities Corporation ("Central Utilities"), which in turn is a subsidiary of Ogden Corporation ("Ogden"); all are registered public

[1] Re Ogden Corp. (1943) Holding Company Act Release No. 4307, 50 PUR(NS) 398.

utility holding companies. The liquidation of Central States has not yet been consummated, and one of the proposals, filed as part of Amendment No. 12 to the § 11(e) plan, provides for an immediate payment in advance of complete liquidation of 30 per cent of the principal amount of Central States' 5 per cent debentures held by others than Ogden, together with interest on that sum to the date of its payment ("30 per cent proposal").[1] The second proposal, filed jointly by Ogden, Central Utilities and Central States as Amendment No. 13 to the § 11(e) plan, proposes the extension of the maturity date of the Central States debentures from January 1, 1946, to January 1, 1947, and provides that the interest payable on and after January 1, 1946, to holders of debentures other than Ogden should be either paid to such holders, placed in escrow pending final determination of the persons entitled thereto, or treated in such other manner as this Commission shall determine to be fair and equitable and in furtherance of orderly liquidation ("maturity extension proposal").

After appropriate notice, hearings in these consolidated § 11 proceedings relating to Ogden and its subsidiary companies were reconvened for consideration of Amendments 12 and 13. Pursuant to our direction, copies of our notices and orders respecting the hearings were sent by Central Utilities and Central States to each known holder of their securities. Representatives of each class of security holders asserting rights to participate in the assets of Central States appeared and were granted leave to participate. After certain evidence had been adduced relative to the proposals contained in Amendment No. 12, the staff of the Public Utilities Division moved to close the record on the 30 per cent proposal on the theory that, on the basis of the record as already developed, the Commission should permit the payment of 30 per cent of the principal amount of the debentures to holders other than Ogden and require the segregation of 30 per cent of Ogden's holdings. The trial examiner, over objection of counsel for various preferred stockholders of Central States, closed the record with respect to the 30 per cent proposal. Evidence was received and without objection the record was closed on the maturity extension proposal. Briefs were filed on the questions whether the closing of the record on the 30 per cent proposal should be sustained and, if so, whether that proposal should be approved, and whether the maturity extension proposal should be approved and, if so, what provision should be made with respect to interest on the debentures during the extension period. Oral argument was waived.

[1] As we shall note, assets of Central States to be distributed are equivalent to only about 31 per cent of all of its debenture claims. The 30 per cent proposal further provides that 30 per cent of the principal amount of debentures owned by Ogden be earmarked or otherwise set aside by Central States pending determination of whether such debentures rank equally with debentures held by others and are entitled to priority over Central States' preferred stock.

As a separate part of Amendment No. 12, it is also proposed that Central States' assets be distributed pro rata among all the holders of Central States debentures, including Ogden. This proposal is concededly not ripe for disposition at this time since hearings have not been concluded on the issues relating to the rank of the debentures held by Ogden.

Pursuant to the plan for the liquidation of Central States and through various steps approved by us, Central States and its subsidiaries have disposed of all their operating properties.[3] Central States' remaining assets, after making provision for the discharge of current liabilities recorded in the amount of $81,236, consist of approximately $1,951,000, almost all of which is in the form of cash and United States Government obligations. Central States has outstanding 5 per cent debentures in the total principal amount of $5,940,000, of which $5,108,040 is owned by Ogden and $831,960 is owned by others than Ogden; 80,000 shares of $7 cumulative preferred stock of which 13,473 shares are owned by Ogden and 66,527 shares are owned by others than Ogden; and 40,600 shares of common stock, all of which is owned by Central Utilities.[4]

The debentures originally carried a maturity date of January 1, 1944. We twice approved their extension for one-year periods,[5] so that they will mature January 1, 1946, unless they are further extended. All interest on the debentures held by others than Ogden has been paid regularly. Ogden received payments of interest on January 1, 1940, July 1, 1940, and January 1, 1941, aggregating $383,103. Interest on debentures owned by Ogden due on July 1, 1941, January 1, 1942, and July 1, 1942, aggregating $383,103 has been deposited in escrow pending the outcome of the issues respecting the rank of those debentures. Payment of interest on the debentures owned by Ogden for the period subsequent to June 30, 1942, has been conditionally waived by Ogden pending the same determination.

The Central States preferred stock is by its terms entitled to an involuntary liquidation preference of $100 and accrued dividends. No dividends have been paid since December 31, 1931, and the arrears amount to over $98 per share.

It is clear that if all the debentures were recognized as prior claims over the preferred stock the remaining Central States assets would be sufficient only to provide approximately 31 per cent satisfaction of the principal amount of the debentures and would permit no payment whatever to the preferred stockholders. However, issues have been raised with respect to whether the debentures and preferred stock owned by Ogden are entitled to priority over publicly held preferred stock or whether on the basis of principles relating to fair and equitable

[3] Re Central States Power & Light Corp. (1941) 9 SEC 266, 306, 634, 721; Re Central States Utilities Corp. Holding Company Act Releases Nos. 3941, Nov. 28, 1942, 5062, 5071 (1944) 56 PUR(NS) 321, 5351, Oct. 13, 1944. Proceeds of the sales were first applied to the retirement of Central States' 5½ per cent first mortgage bonds, Re Central States Utilities Corp. Holding Company Act Release No. 4375, June 24, 1943, enforced without opinion (D. Del. January 6, 1944); Re Central States Utilitie.. Corp. Holding Company Act Release No. 5351, Oct. 13, 1944, enforced, in Re Central States Power & Light Corp. (1944) 58 PUR(NS) 439, 58 F Supp 877.

[4] All of the Central States common stock is pledged to secure Central Utilities' 8 per cent gold bonds, due 1938. No dividends have been paid on the stock since June 30, 1931, and it is carried on Central Utilities' books at $1. Central Utilities' only other asset is cash in an amount less than $100. Its liabilities include $3,500,000 principal amount of bonds plus interest thereon since December 31, 1933.

[5] Re Central States Utilities Corp. Holding Company Act Release No. 4735, Dec. 3, 1943, enforced without opinion (D. Del. January 6, 1945); ibid, Holding Company Act Release No. 5481, Dec. 8, 1944, enforced without opinion (D. Del. December 27, 1944).

plans of reorganization,[6] Ogden's holdings should be subordinated because of the manner in which Ogden's predecessor, Utilities Power & Light Corporation ("Utilities Power"), exercised its control over Central States and because of the manner and circumstances of the creation of the debentures and of the acquisition of debentures and preferred stock by Utilities Power and Ogden.[7] The record on the issue of subordination has not been completed.[8] If Ogden's holdings are subordinated and if the debentures held by others than Ogden should be accorded full priority over the publicly held preferred stock, such debentures would receive payment in full ($831,960) and the publicly held preferred stock would receive between 7 per cent and 14 per cent of their full claim (depending on whether or not Ogden were required to repay the interest received by it which became due on January 1, 1940, July 1, 1940, and January 1, 1941).

If this were the only outcome possible under the facts adduced or which may be presented in the course of a full exploration of the relationship between Utilities Power and Central States and of the circumstances surrounding the issuance and transfer of the debentures, there would be no reason why we should not approve the 30 per cent proposal, the consummation of which would effect an annual saving of interest on debentures held by others than Ogden, estimated at $6,854.[9] However, a number of holders of preferred stock of Central States have objected to the 30 per cent proposal on the grounds (discussed further *infra*) that the system history and the facts relating to the issuance and transfer of the debentures require that not only the debentures owned by Ogden but also those held by others be denied the right to receive payment

[6] Cf. Taylor v. Standard Gas & E. Co. (1939) 306 US 307, 83 L ed 669, 59 S Ct 543 (The "Deep Rock" Case) and related cases.

[7] Utilities Power was reorganized in proceedings under § 77B of the Bankruptcy Act under a plan of reorganization which we approved. Re Utilities Power & Light Corp. (1939) 5 SEC 483, plan approved in Re Utilities Power & Light Corp. (1939) 29 F Supp 763. Pursuant to the plan all the assets of Utilities Power were transferred to Ogden in 1940 and Ogden undertook a program of divestment of its utility interests.

We have previously pointed out that the 77B proceedings with respect to Utilities Power did not operate to bar the assertion of equitable defenses to Ogden's claims against Central States based upon its holdings of Central States' securities. See in Re Adams, Trustee of the Estate of Utilities Power & Light Corp. (1940) 7 SEC 955; Re Central States Utilities Corp. Holding Company Act Release No. 6199, Nov. 8, 1945. See also in Re Derby Gas & E. Corp. (1941) 9 SEC 686, 709, 41 PUR(NS) 370.

[8] Evidence thus far presented on the issue of subordination has been introduced in an attempt to show, among other things, that Utilities Power used its control over Central States and other system instrumentalities to overcapitalize Central States and overburden it with senior securities; caused Central States to realize insufficient proceeds from securities issues owing to excessive "spreads" to affiliated bankers and underwriters; caused Central States to pay excessive construction and service charges from which Utilities Power realized excessive profits; caused Central States to understate depreciation ccruals and provide inadequately for depletion; caused Central States to make improper dividend payments; caused Central States to purchase from Utilities Power unneeded properties at excessive prices; caused Central States to issue purported debt securities to its detriment and for the benefit of Utilities Power; and failed adequately to apprize the security holders of Central States of transactions affecting their rights.

[9] This figure represents interest on 30 per cent of the principal amount of the debentures held by others than Ogden less earnings on Central States' portfolio holdings of government bonds which it is proposed to sell to make the proposed 30 per cent payment.

ahead of or equal with the public holders of preferred stock. They point out that even partial success by them in their contentions with respect to the debentures held by others than Ogden would (assuming the subordination of Ogden's holdings) result in those debenture holders or some of them receiving less than 30 per cent of the principal amount of their debentures, and that complete subordination of those debentures would result in no participation by them. They insist that approval at this time of the 30 per cent proposal or of the payment of debenture interest would be tantamount to an irrevocable determination that their defenses to the claims of debenture holders other than Ogden are not valid. This, they argue, would not be proper because all the facts material to a determination of the issues with respect to Ogden have not yet been adduced and the issues relating to the debenture holders other than Ogden involve in part, at least, an appraisal of the legal and equitable effect of the same and related facts and circumstances.

The preferred stockholders insist that the facts already of record relating to the creation of the debentures must be considered together with all other facts which might be developed bearing upon the asserted priority of the debentures. The debentures were issued in April, 1934, at which time Central States had outstanding 80,000 shares of preferred stock as well as $13,500,000 of first lien 5½ per cent bonds. The entire issue of debentures, in the amount of $6,000,000, was sold to Utilities Power (predecessor of Ogden) in consideration for the surrender to Central States of a 6 per cent demand note of $5,957,000 which was originally payable to Central Utilities (intermediate holding company between Utilities Power and Central States) and for $43,000 in cash. The registration statement relating to the debenture issue which was filed with the Federal Trade Commission recited that $1,400,000 in principal amount of the debentures would be offered by Utilities Power through Central Utilities in exchange for Central Utilities' 6 per cent secured gold bonds on the basis of 40 per cent in principal amount of debentures for 100 per cent in principal of such bonds. After the issuance of the debentures and their receipt by Utilities Power, the stated exchange offer was made by Utilities Power to the holders of Central Utilities bonds. Solicitations were made by literature which pointed out that the chief security for the Central Utilities bonds was the common stock of Central States which, owing to poor earnings by Central States, had received no dividends since June 30, 1931, that even the preferred stock of Central States had not been paid a dividend since December 31, 1931, and that if the exchange were not made the holders of the Central Utilities bonds could look forward only to a default in interest with no recourse to any assets of value for the collection of their claims. The solicitation material represented that by acceptance of the exchange offer the bondholders would secure debentures of Central States having a claim on assets of Central States superior to the bonds turned in and a debt status superior to the preferred stock of Central States. It further recited that the creation of the debentures had operat-

ed to the advantage of the Central States preferred stockholders in that Central States was enabled thereby to substitute a 5 per cent long-term obligation (the debentures) in the place of a short-term 6 per cent obligation (the note to Central Utilities). It was further pointed out that Utilities Power was accepting the reduction in interest and the inferior Central Utilities bonds in order to prevent a default on these bonds. The exchange offer was made conditional upon its acceptance by the holders of 70 per cent of the principal amount of the Central Utilities bonds. Debentures were accepted by about 90 per cent of the bondholders and $831,960 of these debentures are now outstanding in the hands of others than Ogden.[10]

The preferred stockholders insist that, in system adjustments under § 11, the Commission is not bound to recognize apparent priorities created by holding company managements. They urge that they should be free to explore the circumstances under which the debentures were issued and to point out factors in that history bearing on the subordinate position which should be accorded to all the debentures (Ogden's as well as others). To this end the preferred stockholders point out that in the Associated Gas and Electric reorganization we explored the entire history of system finances and relationships and approved as fair and equitable a plan which ignored the apparent corporate locations of assets and the priority positions purportedly created by the management.[11] The preferred stockholders insist that, upon an exploration of the facts, they will be able to show that the issuance of the debentures was a fraudulent attempt to change into prior ranking debt securities the claims of the Central Utilities bondholders which were in effect only claims based on Central States' worthless and inferior ranking common stock. They insist that upon the basis of a full record they will be able to show that fairness and equity require that all the debentures be subordinated to Central States' preferred stock regardless of the good faith of present holders. Further, the preferred stockholders point out that the record does not yet disclose the identities and affiliations of all the debenture holders, and they state that it is, therefore, impossible, on the present state of the record to determine whether there are, in addition to the above-mentioned factors, special reasons for denying priority or full return to particular holders.

Ogden, representatives of other debenture holders, and the staff of our Public Utilities Division oppose the preferred stockholders. They favor approval at this time of the 30 per cent proposal and payment of interest on the debentures held by others than Ogden during the period of the maturity extension.[12] They claim that even if Ogden were subordinated there would

[10] The exchange offer was closed in January, 1937. A holder of unexchanged bonds has appeared in these proceedings and has urged that we require reopening of the exchange offer to permit it now to exchange its bonds for Central States debentures. In view of our decision herein, we need not at this time rule upon this request.

[11] See Re Clarke, Trustee of the Associated Gas & E. Co. Holding Company Act Release No. 4985, April 14, 1944, plan approved (1944) 61 F Supp 11, aff'd (1945) 149 F2d 996, cert. denied (1945) — US —, 90 L ed —, 66 S Ct 45.

[12] Objection to extension of the maturity of the debentures was voiced only by the indenture trustee for the debentures.

be no basis for denying to the holders of debentures other than Ogden the full rights provided for in their debenture certificates because such holders could in no wise be held responsible for or tainted with any fault that might be attributable to Ogden or its predecessor. The view is taken that the record as it now stands contains all the evidence relating to the circumstances surrounding the creation of the Central States debentures and their exchange for the Central Utilities bonds. It is emphasized that the preferred stockholders have not proffered any specific evidence or indicated any particular lines of cross-examination which would augment the record in any respect material to the issue of the rights of the debenture holders other than Ogden as against the rights of the preferred stockholders. It is urged that, as holders of the debentures for which value was given and which were received without knowledge of any of the defenses now asserted by the preferred stockholders, the present debenture holders other than Ogden are entitled to priority of treatment as against the preferred stockholders.[19]

[1, 2] Whatever may be the ultimate decision of the merits of the contentions and cross-contentions, we think it apparent that the preferred stockholders are raising issues relevant to a full determination of what is fair and equitable treatment in this case. The only question before us is the limited one of whether we should now close the record and approve a partial liquidation distribution which will foreclose full consideration of all the facts and equities relating to the preferred stockholders' contentions. We think the preferred stockholders are entitled to an opportunity to bring about a more complete development of the record and adduce facts bearing on the treatment of the non-Ogden holders. And we conclude that it is not appropriate at this time to approve the 30 per cent payment or to foreclose the preferred stockholders from presenting further evidence and argument.

We note in passing that we are not reopening a completely closed record but are merely permitting representatives of security holders to participate in completing the record. We do not by this opinion in any way indicate what conclusion we may reach after the record in these proceedings is completed. We now decide no more than that the preferred stockholders should be free to present their contentions to us on the basis of a more complete record. The preferred stockholders have presented theories of defense against some or all of the debenture holders other than Ogden which may require an appraisal of the cumulative impact of a great variety of facts and circumstances upon the rights of the respective contesting individuals or groups. We do not at this stage in the proceedings decide the ultimate

[19] It has been argued that the debenture holders other than Ogden are holders in due course of negotiable instruments and as such are insulated from the type of defenses urged by the preferred stockholders. The preferred stockholders on the other hand contend that certain provisions of the debentures prevent them from being negotiable instruments, deny that holders took without knowledge of defects, and maintain that in any event the Negotiable Instruments Law would not be determinative of the issues in these liquidation proceedings. In view of our conclusions herein, it is not necessary to rule on any of these matters at this time.

soundness of the theories expressed by the preferred stockholders. In view of these determinations we shall overrule the action of the trial examiner in closing the record as he did. However, we shall expect the objecting preferred stockholders to act with all reasonable promptness in making their cross-examination and in proffering their evidence. If, at any time, it is appropriate to do so we may again consider the entry of an order approving the 30 per cent proposal in advance of a determination of the issues relating to Ogden's holdings. However, until that time the payment should not be made and we will not now approve the amendment calling for the payment.

Turning to the maturity extension proposal, it appears that considerations similar to those which existed with respect to the two previous one-year extensions approved by us are now present (see footnote 5, *supra*). As has been seen, the issues relating to the rights of the various classes of security holders to participate in the distribution of Central States' assets are still undetermined and no distribution can be made to any holders of the debentures at this time. It is clear that no final determinations can possibly be made prior to January 1, 1946, the present maturity date of the debentures. Within the period of an additional year, however, it is likely that with diligence all the outstanding issues can be fully explored and resolved and the final distribution of Central States' assets may be had. We shall accordingly approve the proposal to extend the maturity date of Central States' 5 per cent debentures to January 1, 1947.

[3] In keeping with our conclusions previously stated with respect to the 30 per cent proposal, we are of the opinion that no interest should be paid on any of the debentures during the period of extension. Ogden has agreed to waive interest payments on the debentures owned by it on condition that it retain a claim to such interest which it may assert if and when the total principal amount and the interest on all of the debentures owned by persons other than Ogden have been paid in full, and this provision meets with our approval.[16] With respect to interest on debentures held by others than Ogden, we shall approve the second of the three alternatives proposed in Amendment No. 13, namely, that Central States place the amount of such interest ($41,598), in escrow, pending a final determination of the persons entitled thereto.

On the basis of the foregoing facts, we find that the extension of the maturity date of Central States' debentures and the escrow of the interest which will become due on January 1, 1946, and July 1, 1946, is a necessary step in the effectuation of the provisions of § 11(b) and is fair and equitable to the persons affected thereby. We will grant applicants' request that we apply to the appropriate Federal District Court to enforce and carry out the terms and provisions of the proposed extension and escrow.

[16] Identical waivers have been made by Ogden and approved by us in prior proceedings. See Notes 3 and 5, *supra*.

INDIANA PUBLIC SERVICE COMMISSION

Re Eastern Indiana Gas Company

No. 15381
January 24, 1946

APPLICATION *for authority to increase natural gas rates; granted in part and denied in part.*

Rates, § 130 — Reasonableness — Service factor.

1. The character of service that a public utility company is able to render, and is actually rendering, must be considered in establishing rates, p. 178.

Return, § 36 — Right to earn — Duty to furnish adequate service.

2. A public utility should provide means of supplying the reasonable needs of the public as they arise before being entitled to any return upon the value of its property, since it enjoys a monopoly and is charged with the responsibility of furnishing reasonably adequate service to the public in the territory where it is authorized to operate, p. 178.

Rates, § 172 — Reasonableness — Value of service factor.

3. The reasonableness of rates charged by a public utility depends upon the value of the service rendered rather than upon the profits of the utility, p. 178.

APPEARANCES: Paul R. Benson, Attorney, New Castle, Samuel L. Trabue, Attorney, Rushville, and Gilliom, Armstrong and Gilliom, Attorneys, Indianapolis, for petitioner; W. B. Keaton, Attorney, Rushville, for the city of Rushville and the Rushville Junior Chamber of Commerce; George J. Burk, General Counsel, and Harry R. Booth, Utilities Counsel, Howard S. Guttmann, Attorney, Washington, D. C., for the Director of Economic Stabilization and the Administrator of the Office of Price Administration, as intervenor; Glenn R. Slenker, Public Counsellor, and Robert E. Jones, Assistant Public Counsellor, Indianapolis, for the public.

By the COMMISSION, Cannon, Commissioner: On September 4, 1941, Eastern Indiana Gas Company, hereinafter called petitioner, filed a verified petition with the Public Service Commission of Indiana requesting that the Commission conduct an investigation and hold hearings and, thereafter, enter an order in this cause determining and fixing a schedule of rates which would be just and reasonable and would yield to petitioner a just, adequate, and compensatory return upon the fair value of property of petitioner devoted to said service, and authorize petitioner to promulgate and put into effect proper rules and regulations and grant petitioner such other and further relief as deemed proper, which petition is made a part hereof and incorporated herein by reference.

Thereafter, investigations were

made by the accounting and engineering staffs of the Commission, and pursuant to notice duly published as required by law in the Rushville Republican and the Rushville Telegram, both being newspapers of general circulation printed and published in the English language in Rush county, Indiana, and after notice to all parties of record, a public hearing was held in the circuit court room of the Rush county circuit court in the city of Rushville, Indiana, at 10 o'clock A. M., Monday, May 3, 1943, which was continued to and concluded on May 4, 1943; further hearings were held by the Commission on said petition on February 21, 1944, in the city of Rushville, Indiana, on February 22, 1944, in the city of Indianapolis, Indiana, on February 23, 1944, in the city of Cambridge City, Indiana, and on November 19, 1945, in the city of Indianapolis, Indiana, with appearances as above noted.

On August 10, 1943, 50 PUR (NS) 5, the Commission approved an interlocutory order in this cause, in which it found that petitioner herein should establish and make effective a rate of $1.27 per thousand cubic feet of 1,000 BTU natural gas, as a temporary rate; that said temporary rate so determined and established and approved should be the rate to be charged for gas service rendered by petitioner to its customers, unless and until otherwise ordered by the Commission; and petitioner was authorized and ordered to file a temporary rate schedule with the tariff department of this Commission in accordance with the rules thereof governing the composition and filing of rate schedules, on or before August 15, 1943, said temporary rate to be effective on all regular bills rendered by petitioner on and after September 1, 1943; said order further provided that if petitioner, for any reason whatsoever, failed or refused to obtain for its gas system an adequate supply of gas by December 1, 1943, then and in that event, the petition of petitioner for an increase in gas rates should be denied and temporary rate should automatically terminate and concurrently therewith the previously existing rate of $1.05 per thousand cubic feet of 1,000 BTU natural gas should automatically be the rate to be charged by petitioner for natural gas to its customers on all bills rendered on and after December 1, 1943. Said interlocutory order is made a part hereof and incorporated herein by reference.

Thereafter, on December 1, 1943, the Commission approved an order in this cause, in which it ordered and directed that the temporary rate approved by the Commission in its interlocutory order, in this cause approved on August 10, 1943, *supra*, should be continued in full force and effect as a temporary rate until further order of the Commission, and that the Commission continue to retain jurisdiction of the subject matter of the petition in these proceedings and the parties thereto pending further investigation; which order is made a part hereof and incorporated herein by reference.

At the conclusion of the hearing on November 19, 1945, petitioner herein, through its attorneys, requested permission to file briefs; the permission as requested was granted and on December 17, 1945, petitioner filed a brief with the Commission; no other parties of record filed briefs.

On October 3, 1945, during these proceedings, petitioner filed a verified petition with the Commission, designated as a "petition to eliminate part of interlocutory orders," which petition in substance alleged that the petitioner had secured from the Panhandle Eastern Pipe Line Company an additional supply of gas for petitioner's consumers in the town of Fortville, Indiana, and vicinity in compliance with the orders of the Commission, heretofore entered, requiring petitioner to acquire an additional supply or source of gas; in said petition petitioner requested the Commission to eliminate from its interlocutory orders heretofore entered that part of said orders which applied and referred to the gas service and the temporary nature of the rate to be charged by petitioner for gas service in the town of Fortville, Indiana, and vicinity; said petition is incorporated herein and made a part hereof by reference.

On October 3, 1945, petitioner herein filed a schedule of rates, rules, and regulations covering gas service for Fortville, Indiana, and rural territory immediately adjacent thereto, effective without notice and to go into effect on October 3, 1945; said schedule was designated as P.S.C.I. No. G2–NS, and canceled and superseded all other tariffs for Fortville and vicinity. On October 4, 1945, the Commission approved said schedule of rates temporarily pending final order and disposition of the petition filed in this cause; said schedule of rates is incorporated herein and made a part hereof by reference.

Finding of Facts

The Commission, having heard and considered the evidence presented in this cause and being duly advised in the premises, finds from the evidence in this cause established by facts which are summarized and found as follows:

1. Petitioner, Eastern Indiana Gas Company, is a corporation organized and existing under the laws of the state of Indiana, with its principal office and place of business in the city of New Castle, Indiana.

2. Petitioner, as it now exists, is the result of the consolidation and merger of the old Eastern Indiana Gas Company with the Rushville Natural Gas Company and the Central Fuel Company, which consolidation and merger was approved by this Commission in March, 1931, upon petition and after a public hearing.

3. Petitioner is a public utility within the meaning of the statutes of the state of Indiana, and, as such, is subject to the jurisdiction of and regulation by this Commission and is authorized to engage in the sale and distribution of gas to the public.

4. Petitioner has been and is now engaged in the sale and distribution of natural gas to the public in the following cities, towns, and villages: Rushville, Cambridge City, Pershing, Dublin, Straughn, Dunreith, Mays, Raleigh, Spiceland, Lewisville, Fortville, Mt. Auburn, Sexton, Circleville, and McCordsville and in rural areas on and along its transmission lines in the counties of Rush, Wayne, Henry, Hancock, Hamilton, and Madison counties, Indiana.

5. Petitioner, until recently, derived its entire supply of natural gas from approximately 150 gas wells, the majority of which are located in the

vicinity of Rushville, Indiana, a few being located in the vicinity of McCordsville, and Fortville, Indiana.

6. At the time of the filing of petition herein, petitioner's supply of gas was inadequate to supply the reasonable demands and needs of the public in the areas it served.

7. Since the filing of the petition herein and during this investigation, petitioner has acquired an additional supply of natural gas from Panhandle Eastern Pipe Line Company and is now able and is rendering a reasonably adequate service to the public in the incorporated town of Fortville, Indiana.

8. Since the filing of the petition herein and during this investigation, petitioner has acquired an additional supply of natural gas in limited quantities by drilling new wells and by cleaning old wells in the Rushville area and is now able and is rendering a reasonably adequate service to the public in the incorporated city of Rushville, Indiana.

9. Petitioner's service in all other cities, towns, villages, and rural areas being served by petitioner is inadequate and does not meet the reasonable demands and needs of the public being served.

10. At the time of the filing of petition herein and prior thereto, petitioner had not kept its books in accordance with any recognized system of accounting, nor in compliance with the uniform system of accounts as adopted and prescribed by this Commission.

11. At the time of the filing of the petition herein and prior thereto, because of the improper and irregular manner in which petitioner kept its books, no original cost data was available and the engineering department of this Commission was required to make a field count and estimate the actual cost and age of the property, based primarily on inspection.

12. The estimated original cost depreciated as determined by the engineering department of this Commission and adopted of record by petitioner for the purpose of these proceedings, established a rate base of not in excess of $424,000.

13. Gas fields in Indiana from which petitioner is and has been deriving its source of supply are rapidly being depleted and the volume of gas diminishing with no reasonable anticipation that exploration will discover any new or additional gas fields in Indiana from which petitioner can increase its supply of natural gas.

14. The depletion of the gas fields from which petitioner derives its source of supply has not been sudden and unexpected; on the contrary, the depletion has been gradual and over a long period of years.

15. Petitioner is and has been receiving earnings and a rate of return slightly less than 2 per cent as fully set out in the order of the Commission in this cause approved on August 10, 1943, 50 PUR(NS) 5, which is incorporated herein by previous recital in this order.

16. Investigations that have been conducted by the engineering department of this Commission throughout these proceedings show that there has been no material improvement of service by petitioner to the public, with the exception of the service to the public in Rushville and Fortville, Indiana.

Opinion and Conclusions

The petition filed herein and the investigations conducted by the Commission as prayed for in the petition present two basic problems: (a) the establishment of the current fair cash value of the property of petitioner which it employs for the convenience of the public; and (b) the establishment of a schedule of rates that will yield to petitioner a reasonable and just rate of return.

The first problem is easily disposed of. The estimated original and estimated cost depreciated as determined by the engineering department of this Commission having been adopted for record by petitioner for the purpose of these proceedings can be accepted as the current fair cash value of petitioner's property employed for the use and convenience of the public.

[1–3] Having arrived at the current fair cash value of petitioner's property devoted to public use, the Commission is confronted with the second problem of establishing a rate which will yield petitioner a reasonable and just return. In establishing a rate the Commission must necessarily consider the service the utility is able to and is rendering. Rates and service are inseparable and may be said to "walk hand in hand." One cannot be considered without a consideration of the other.

The Indiana statute provides, "Every public utility is required to furnish reasonably adequate service and facilities." It also provides, "The charge made by any public utility for any service rendered, or to be rendered, shall be reasonable and just, and every unjust or unreasonable charge for such service is prohibited and declared unlawful."

The Indiana statute also provides, "The Commission shall value all property of every public utility actually used and useful for the convenience of the public at its current fair cash value."

The legislature established this Commission to regulate public utilities and by statute laid down the general rule of law that all regulated public utilities should charge reasonable and just rates. That general rule that a rate must be reasonable and just is the standard for each utility. To this Commission is delegated the task of ascertaining and stating what rate is reasonable and just for petitioner herein and hence in accordance with the standard.

It appears fairly obvious that there being no controversy concerning the current fair cash value of petitioner's property, the only issue remaining is the determniation of a rate that will be reasonable and just. In determining this important issue the Commission, as previously stated, must give careful consideration to the service now being rendered, the service that has been rendered in the past, and the service that petitioner can reasonably be expected to render to the public in the future.

The service history of petitioner, arrived at from facts established from the evidence in this cause, conclusively shows that petitioner is not now (with the exception of Rushville and Fortville), and has not been for many years in the past rendering reasonably adequate service to the public and has not maintained facilities adequate to render said service. It is equally clear

that petitioner's inability to render reasonably adequate service is due primarily and principally to its lack of a sufficient supply of gas. Petitioner's source of supply, until recently, when petitioner contracted for a supply of interstate gas, has been and still is from Indiana natural gas fields, which have been steadily depleted all within the common knowledge of the gas industry and this Commission and known to petitioner. It is equally true that these Indiana gas fields will continue to yield small quantities of natural gas in the future, but in diminishing quantities.

Petitioner contends in these proceedings that its trouble is due to labor shortages and inability to acquire materials and equipment, directly attributable to World War II. No one can seriously question the difficulty that has been experienced in obtaining both labor and materials during the past war; however, petitioner was in no better condition prior to World War II, during those years when both labor and materials were plentiful. There can be no question but what petitioner has known for many years, or by the use of ordinary diligence should have known, that it had an inadequate supply of natural gas available from Indiana fields, and should have made timely arrangements and provisions to meet the reasonable needs of the public it serves. This might have been done by the construction of artificial gas plants, the purchase of natural gas from interstate sources, the installation of additional and adequate storage facilities, the enlargement and modernization of the transmission facilities, and by other improvements and more competent management. These are matters of management and not regulation and this Commission cannot and does not propose to encroach upon the realm of management.

Summarizing these proceedings, they resolve themselves into a determination by this Commission of what return, if any, a public utility is entitled to demand and receive from the public it serves, if such utility is not rendering reasonably adequate service. Admittedly the rate of return petitioner is and has been receiving is very low as compared to other utilities rendering a natural gas service to the public, if we do not take into consideration the service which petitioner has been rendering. As previously stated, this predominate factor cannot be ignored and segregated from rate of return.

The public being served by petitioner has no control over the service it receives. To require it to pay a high or even a moderate rate for a service it is not receiving would be manifestly unreasonable and unjust, prohibited and declared unlawful by the statutes heretofore referred to. The public interest is not necessarily best served by the lowest rate. It is best served by the lowest rate which will tend to assure to the public adequate and efficient service to meet the public needs, both now and in the future, provided the utility has facilities and is able to render a reasonably adequate service.

The public cannot be expected, and the statute does not contemplate that the public should be required to pay rates which return to the utility a profit to be accumulated until such time as the utility can in the future acquire adequate facilities sufficient to

enable it to render to the public reasonably adequate service.

In view of the fact that a public utility enjoys a monopoly and is charged with the responsibility of furnishing reasonably adequate service to the public in the territory where it is authorized to operate, it should provide means of supplying the reasonable needs of the public as they arise before being entitled to any return upon the value of its property.

It is the opinion of this Commission, that the reasonableness of rates charged by a public utility depends upon the value of the service rendered and not upon the profits of the utility, and a rate must not exceed value of the service.

It is the further opinion of this Commission that petitioner is now able to and is rendering reasonably adequate service to the public in the city of Rushville and the town of Fortville, Indiana.

It is the further opinion of this Commission that petitioner is not able to and is not rendering reasonably adequate service to the public in the cities, towns, villages, and rural areas being served by petitioner with the exception of Rushville and Fortville, Indiana.

It is the further opinion of this Commission that the temporary rate of $1.27 per thousand cubic feet of 1,000 BTU natural gas, fixed by the interlocutory order of the Commission approved in this cause on August 10, 1943, 50 PUR(NS) 5, should become the permanent rate to be charged by petitioner to the public within the incorporated limits of the city of Rushville, Indiana.

It is the further opinion of this Commission that the rates filed with this Commission by petitioner on October 3, 1945, covering gas service for Fortville, Indiana, and rural territory immediately adjacent thereto should be approved by the Commission and made permanent, provided, however, that said rate should only apply to the public within the incorporated limits of the town of Fortville, Indiana.

It is the further opinion of this Commission that in all other cities, towns, and villages and rural areas being served by petitioner the temporary rate of $1.27, above referred to, should be terminated and the former rate of $1.05 per thousand cubic feet of 1,000 BTU gas should be established for all areas with the exception of Rushville and Fortville, Indiana.

Re Peoples Gas Light & Coke Company

No. 33466
January 18, 1946

APPLICATION *by gas utility for approval of discontinuance of service to certain customers during an emergency created by a strike; granted subject to conditions.*

Service, § 59 — Jurisdiction of Commission — Gas curtailment during strike.

1. The Commission has jurisdiction of a petition by a gas company for authority to discontinue or curtail gas to selected industrial customers during the continuance of a strike in plants from which the company ordinarily receives a necessary part of its gas supply, p. 186.

Service, § 143 — Curtailment of gas during strike — Strike threat to supply.

2. A company supplying mixed gas and threatened with a curtailment of its supply of a necessary coke oven gas ingredient purchased from steel companies, during a strike of steel company employees, should be authorized during the emergency to curtail or discontinue the supply of gas to such customers (a) as normally use large quantities of gas, (b) as are not engaged in an activity essential to the health, safety, and well-being of the community, and (c) as can be conveniently and readily utilized by the management to reduce the deficiency in the gas supply, not, however, disturbing the supply to residential and domestic customers; to necessary institutional customers, such as hospitals, schools, and other necessary establishments; to essential commercial and industrial customers, such as processors, handlers, and distributors of foods and medical supplies; to commercial customers generally; and so far as possible to other customers, p. 186.

Discrimination, § 205 — Gas curtailment because of strikes — Selection of customers.

3. Exercise of managerial judgment in selecting customers whose gas service will be discontinued during an emergency resulting from a steel strike and curtailment of a gas supply from steel plants, made under Commission authorization for such curtailment during the emergency for the protection of residential and domestic customers and others engaged in an activity essential to the health, safety, and well-being of the community, does not constitute discrimination among customers, p. 186.

By the COMMISSION: On January 18, 1946, The Peoples Gas Light and Coke Company (hereinafter sometimes referred to as "Peoples Company") filed with the Commission its petition in the above matter, representing that an emergency existed involving the interest of the general gas consuming public in the city of Chicago and the suburban area surrounding it and asking that the Commission, after such hearing as it might consider necessary, take prompt action forthwith to authorize Peoples

Company to discontinue or curtail the supply of gas to any one or more of its industrial customers during the continuance of an anticipated steel strike and for such period thereafter as may elapse until normal conditions of gas delivery are restored, and further to authorize Peoples Company to require like curtailment by Public Service Company of Northern Illinois to the extent that such curtailment is necessary to maintain a supply of gas to the remaining customers on the interconnected system of the two companies. The Commission, having considered the representations made in the said petition, set the matter for hearing before its duly authorized examiners, which hearing was held on January 18, 1946, and at which hearing testimony was presented on behalf of Peoples Company.

From the said verified petition and he evidence presented in support thereof, it appears as follows: Peoples Company is a public utility supplying gas to the public generally in the city of Chicago and is the only public utility rendering such service and Public Service Company of Northern Illinois supplies gas as a public utility to the general public in all suburbs contiguous to the city of Chicago and to a number of the more remote suburbs. The distribution systems of the two companies are operated by them under the terms of a certain Interchange Gas Agreement, dated as of December 1, 1936, approved by order of this Commission in Cause No. 22391 as a single interconnected system. The gas supplied through the said interconnected system has an average heating value of not less than 800 BTU per cubic foot and consists of a mixed gas, the components of which are natural gas received by Peoples Company from Chicago District Pipeline Company (part of which is received at the Crawford station of Peoples Company on the west city limits of Chicago and the rest of which is received at the south city limits of Chicago and carried into the 98th street station of Peoples Company) carburetted water gas produced in the plants of the Peoples Company and a plant of Public Service Company of Northern Illinois, and coke oven gas, the major part of which is purchased by Peoples Company from three steel companies, namely, Youngstown Sheet and Tube Company, Interlake Iron Corporation, and the Wisconsin Steel Works of International Harvester Company, all of which gas originates in steel plants located in the city of Chicago. Except for that part of the said 800 BTU mixed gas which is produced in the so-called Skokie plant of Public Service Company of Northern Illinois, all of such 800 BTU gas originates within the system of Peoples Company, which supplies such gas to its own customers and also to Public Service Company of Northern Illinois for delivery in the suburban area above described. The several gas manufacturing plants of Peoples Company are interconnected with each other in such a way that only the natural gas which flows from the pipes of Chicago District Pipeline Company into the facilities of Peoples Company at the latter's Crawford station is available to the plants of Peoples Company for mixing to produce 800 BTU mixed gas. The 98th street station of Peoples Company is not a production plant, but is equipped only for mixing

natural gas with the coke oven gas obtained from the steel mills. The natural gas has a heating value of something over 1,000 BTU per cubic foot while all of the manufactured gas above referred to which is mixed with it, both that produced and that purchased, has an average heating value ranging from 500 to 550 BTU, the steel gas averaging about 530 BTU per cubic foot. Since there is no facility whereby any low heat content manufactured gas can be introduced into the mixing plant at 98th street, failure to receive steel mill coke oven gas will automatically curtail the supply of mixed gas, not only in the amount of coke oven gas not received, but also in the amount of natural gas normally mixed with this coke oven gas which mixture is in the approximate ratio of nine volumes of natural gas to eight volumes of coke oven gas.

The consuming public in the city of Chicago has equipment and consuming appliances that have been built or adjusted to work properly with 800 BTU gas. Any increase or decrease in the BTU content of the gas of even 5 per cent will cause serious inconvenience to a substantial percentage of consumers and present hazards, particularly in the home, that can be faced only as a last resort in a most serious emergency.

The introduction of carburetted water gas enriched to 800 BTU of heat content into the distribution mains of Peoples Company would present operating difficulties due to the action of gases of the varying specific gravities that would be then present in Peoples' distribution facilities and would cause serious annoyance and inconvenience to the consumers because of the flame characteristics and other physical factors by which the resulting gas mixture would differ from that to which the public has become accustomed and to which their appliances have been adjusted.

For a period of ten days, from December 14 to December 23, 1945, inclusive, the average daily send-out of 800 BTU mixed gas in the said interconnected system was 225,000,000 cubic feet, and on December 17th the send-out was 254,000,000 cubic feet. All of such 800 BTU gas was supplied to customers who purchased gas on a firm basis and the send-out of 254,000,000 cubic feet on December 17th was necessary in order to meet the firm demand of such customers for gas. On that day, December 17th, there existed within the interconnected system unused capacity for production of 800 BTU gas to the extent of of 37,000,000 cubic feet per day. Peoples Company on that day received from the three steel companies above named approximately 23,000,000 cubic feet of coke oven gas which it mixed with natural gas to produce approximately 48,000,000 cubic feet of mixed gas of not less than 800 BTU content, which 48,000,000 cubic feet of gas entered into and formed a part of the send-out of 254,000,000 cubic feet on that day. Had the last-named quantity of gas from the source stated not been available for the interconnected system on that day, there would have been, even had all the remaining production capacity within the system

been in full operation, a severe drain upon the stock of gas in the holders of Peoples Company and Public Service Company of Northern Illinois in order to meet the demands of their firm customers. The mean temperature in the Chicago area on December 17, 1945, was 1° above zero Fahrenheit, whereas regular operating estimates of Peoples Company of maximum day send-outs are based upon an assumed mean temperature of 7° below zero Fahrenheit, which temperature has not as yet been experienced during the current winter season in the Chicago area.

It was shown by the evidence and is a matter of general public knowledge that a strike has been called throughout the steel industry in the United States to be effective on January 13, 1946, and that the effective date of the strike has been postponed only until January 21st next; that negotiations looking to a settlement of the strike are now proceeding but the outcome thereof is entirely uncertain; and that the steel industry generally contemplates the strong possibility that the strike will become effective on January 21st, i.e., within three days after filing of the petition herein.

It appears that in case the steel strike goes into effect, Peoples Company is faced with a prospective immediate loss of all but a possible 6,000,000 cubic feet per day of the coke oven gas normally received by it from the three steel companies above named, and that receipt of even this quantity may not be realized; that by the use of such 6,000,000 cubic feet of coke oven gas, if received, Peoples Company could have available approximately 13,000,000 cubic feet of 800 BTU mixed gas for delivery within the interconnected system, as compared with the 48,000,000 cubic feet of such gas from the same source which was available to it on December 17, 1945; that under favorable weather conditions, Peoples Company can continue to supply the full requirements of gas to all of its firm customers even should it lose the supply of gas obtained by mixing the steel mill coke oven gas with natural gas and without resorting either to increasing the BTU content of the gas furnished to customers or to introducing enriched carburetted water gas into the mains; that as weather conditions cause a continuing increase in the demand for gas, the maintenance of a supply of 800 BTU gas to the general customers in the interconnected system would not only be increasingly difficult, but that a recurrence, during the steel strike, of a demand for gas similar to that of December 17, 1945, would make the maintenance of a supply of 800 BTU gas to the general customers in the interconnected system an acute operating problem.

In this situation Peoples Company proposes to publish one or more advertisements, directed to its general customers, appealing for their coöperation in the conservation of gas; and contemplates, as a further imperative necessity, the taking of steps by which the available supply of gas will so far as possible be held available for its several classes of customers generally by curtailment of the supply of

gas in whole or in part to selected customers; that there exists no classification of customers presently in effect that would enable Peoples Company or the Commission to identify with precision the class of customers that should first be deprived of gas in the event of an emergency such as may arise; that Peoples Company proposes to influence those of its customers that are large users of gas and that can, without serious loss or inconvenience, discontinue the use of gas, to voluntarily give up some or all of the gas they ordinarily consume; that Peoples Company expects that some 200 large firm industrial customers can be found who would, by stopping their own consumption of gas, make available to other customers some 15,000,000 to 18,000,000 cubic feet of gas per day; that if all firm industrial customers were shut off, approximately 6,800 additional customers would necessarily be dealt with and such 6,800 customers would provide only 5,000,000 to 7,000,000 cubic feet of gas a day; that some of these customers (the baking industry and the food processing industry, generally) are essential to the welfare of the community; that included in the contemplated group of customers that may be curtailed in an emergency are some of the larger commercial customers; that Peoples Company considers the curtailment of gas to all industrial customers wholly impractical and to a large extent useless as a means of effecting any material reduction in the aggregate demand for gas, in that to curtail or discontinue the supply of gas to numerous small users would not contribute substantially to the solution of the problem, yet at the same time would present the operating difficulty of contacting and influencing such customers and of making the physical adjustments necessary to accomplish such curtailment or discontinuance, but that Peoples Company is of the opinion that selective curtailment of gas supply among the larger customers on the interconnected system would have a substantial effect in reducing the aggregate demand upon the said system and in making available to the remaining customers a firm supply of gas.

Peoples Company urges upon the Commission, therefore, that it be authorized for the duration of the steel strike and thereafter until normal conditions of gas delivery are restored, to obtain voluntary curtailment in the use of gas by those large customers that Peoples Company may select and that the selection of large users of gas for this purpose without evoking similar curtailment by other customers in the same classification, shall not constitute discrimination; and that where voluntary curtailment by large customers cannot be obtained by Peoples Company, that Peoples Company be authorized to disconnect such customers.

Section 4 of Art IX of the abovementioned Interchange Gas Agreement between Peoples Company and Public Service Company of Northern Illinois provides that there shall be no liability upon Peoples Company for nondelivery of gas or for any reduction or delay of such delivery resulting from any cause beyond Peoples

Company's control. It would manifestly be improper for large customers of Public Service Company of Northern Illinois to continue during a time of gas shortage in the interconnected system to receive their full supply of gas if at the same time like customers of Peoples Company were being curtailed in order to conserve the general supply.

The Commission having given due consideration to the verified petition and the evidence presented in support thereof, and being fully advised in the premises, is of the opinion and finds:

[1–3] 1. That the Commission has jurisdiction of Peoples Company and of the subject matter of this proceeding.

2. That an emergency with respect to the sufficiency of the supply of gas to the general public on the interconnected system would arise when weather conditions, combined with other conditions beyond the control of Peoples Company, cause a demand for gas by firm customers at or above the gas supply available in view of the prospective loss of the supply of coke oven gas purchased from steel companies in the event the impending strike closes or reduces the operations of the coke oven plants of such steel companies.

3. That in case the supply of gas from such steel companies is so reduced that the total supply of gas available for the said interconnected system becomes insufficient to meet the firm requirements of general customers on days of peak demand, the requirements of industrial customers cannot also be fully met.

4. That under such circumstances a sufficient supply of gas would be available to meet the requirements of (a) general, domestic and residential customers (especially if such customers coöperate by holding their requirements to their reasonable minimum needs), (b) institutions, such as hospitals, schools and other necessary establishments, (c) commercial and industrial customers essential to the health, safety, and wellbeing of the communities involved, such as, processors, handlers, and distributors of foods, medical supplies, etc., and (d) commercial customers, generally, only if authority is granted by the Commission to curtail or discontinue the supply of gas to selected customers.

5. That the selection of customers for such curtailment is an operating problem with respect to which no specific rules can be laid down in advance, but which can be met only by the exercise of judgment by the officials in charge of the operation of the interconnected system.

6. That the general principle to be followed by such officials would be the curtailment or discontinuance of a supply of gas to such customers (a) as normally use large quantities of gas, (b) as are not engaged in an activity essential to the health, safety, and well-being of the community, and (c) as can be conveniently and readily utilized by the management of Peoples Company to reduce the deficiency in the gas supply.

7. That the situation presented constitutes an immediate emergency affecting the supply of gas to the pub-

lic in the Chicago metropolitan area and is such that immediate action may reasonably and properly be taken by the Commission.

8. That the authorization to Peoples Company to curtail or discontinue the supply of gas to such customers as may be selected by the management of Peoples Company within the general principle advanced in finding 6 above may reasonably be granted and the public will be convenienced thereby and such selection does not constitute discrimination by Peoples Company among its customers.

9. That in exercising the authority herein in this proceeding granted, Peoples Company shall not disturb the supply of gas to residential and domestic customers; to necessary institutional customers, such as hospitals, schools, and other necessary establishments; to essential commercial and industrial customers, such as processors, handlers and distributors of foods, medical supplies, etc.; to commercial customers, generally; and so far as possible, to other customers; Peoples Company restricting the exercise of the authority herein granted to selected customers in so far as such exercise is required to meet the emergency situation.

It is therefore *ordered* by the Illinois Commerce Commission that petitioner, The Peoples Gas Light and Coke Company, be and it is hereby authorized, in its discretion, during the effective period of the steel strike now scheduled to begin January 21, 1946, and for such further period as may elapse until normal deliveries of gas to petitioner from steel companies in the city of Chicago are resumed, to curtail or discontinue the supply of gas to any customer or customers supplied by it directly and to require like curtailment or discontinuance of the supply of gas to any similar customer or customers who through the operation of the Interchange Gas Agreement receives its or their supply of gas indirectly from petitioner; provided that the supply of gas shall not be curtailed to general domestic and residential customers except through their voluntary coöperation nor to commercial, industrial, or institutional customers whose operations are essential to the health, safety, or well-being of the community.

It is further *ordered* that the Commission retain jurisdiction of the subject matter herein under consideration for the purpose of entering any such further order or orders as the Commission in its judgment may deem meet.

DISTRICT OF COLUMBIA PUBLIC UTILITIES COMMISSION

Re Taxicab Operators, Drivers, and Garage Employees Local Union No. 935

P. U. C. No. 2942, G. D. No. 1914
Order No. 2984
December 5, 1945

APPLICATION *for hearing relating to limitation of taxicabs and to taxicab rates; hearing denied and rates relating to answering telephone calls for taxi service and proposed change in zone boundaries held for further consideration.*

Motor carriers, § 22 — Limitation of taxicabs.

1. There is no statutory limitation on the number of taxicab licenses that may be issued in the District of Columbia, p. 189.

Motor carriers, § 5 — Powers of Congress — Limitation of taxicabs.

2. Only Congress can limit the number of taxicab licenses that may be issued in the District of Columbia, p. 189.

Rates, § 253 — Tariffs — Definiteness and certainty — Taxicabs.

3. Rates prescribed by the Commission must be so definite and certain that every person desiring to avail himself of service shall be able to tell for himself the correct charges he must pay, p. 191.

Rates, § 423 — Disapproval of taxicab tariff — Lack of clarity and definiteness.

4. A hearing on proposed changes in group-riding taxicab rates should be denied where they are not so framed as to reduce the need for interpretation to a minimum but are susceptible of misunderstanding, p. 191.

Procedure, § 33 — Rehearing — Hourly taxicab rates — Change in operating cost.

5. A request for a rehearing on a proposed increase in hourly taxicab rates is not justified in the absence of a showing that the cost of operating a cab is more than it was when the Commission fixed existing hourly taxicab rates, p. 191.

Rates, § 423 — Taxicab rates — Charge for waiting time.

6. A taxicab driver should be compensated for his time when the passenger requires the taxicab to wait for him for more than a reasonable length of time, p. 191.

Rates, § 423 — Taxicab rates — Waiting time.

7. A charge of 20 cents for a 5-minute waiting period for a taxicab was

deemed unreasonable, whereas a charge of 10 cents for such a period was deemed reasonable, p. 191.

By the COMMISSION: Taxicab Operators, Drivers and Garage Employes Local Union No. 935 (hereinafter referred to as the "Union") filed an application on October 24, 1945, as amended on November 21, 1945, and November 26, 1945, for a hearing with respect to regulations limiting taxicabs necessary for adequate service to the public, and for the consideration of proposed changes in zones, rates, and regulations pertaining to taxicabs.

The Commission has indicated to representatives of the Union on several occasions that the Union is not a public utility and is not subject to regulation and control by this Commission. However, it has also been explained that this was a technicality on which the Commission would not stand, if the Union took steps to supplement or amend its application by proof that it represents and is acting for and in behalf of a substantial number of taxicab operators. Nothing has been done by the Union in this regard, and the Commission remains in the dark as to the interest in the application before it beyond that shown by the officials of the Union.

In spite of the foregoing, the Commission has carefully considered each of the questions raised by the application and its decisions thereon and the reasons therefor are fully set forth hereinafter.

Limitation of Number of Taxicabs

[1, 2] Under existing law, there is no limitation on the number of taxicab licenses that may be issued in the District of Columbia. This is a matter that only Congress can pass upon.

Proposed Changes in Rates

The changes proposed in the existing rates are listed as they appear in the application, as amended:

1. The prevailing single passenger fares shall apply as they are now.

2. The group fare of each passenger shall be reduced 10 cents for each zone passenger riding in group.

Illustration

Pick-up
1 passenger at Walter Reed .... 4th Zone
1 passenger at 16th & Upshur .. 3rd Zone
1 passenger at 16th & Park Road 2nd Zone
2 passengers at 16th & T ..... 1st Zone
Destination—Navy Department .. 1st Zone

The Fares
4th Zone passenger rode one zone alone and three zones in group. Therefore, he is entitled to 30¢ reduction from his single fare of 90¢ and his fare is 60¢.

All other passengers in this trip are riding the respective zones in group—so their fare is reduced:

10¢ in each zone, as follows:
3rd Zone to 1st Zone ..... 40¢ each
2nd Zone to 1st Zone ..... 30¢ each
1st Zone to 1st Zone ..... 20¢ each

3. The hourly rate shall be $3 an hour for the first hour or a fraction thereof and 75 cents for each 15-minute period thereafter.

4. For each 5 minutes or a fraction thereof of waiting time the charge will be 20 cents.

5. A telephone call for a cab shall be charged for at the rate of 25 cents.

6. The fare to the Livingston area as defined by the Union map (attached to the application) shall be $1.10 for a single passenger and group rates shall apply as shown in point 2.

The existing taxicab rates were de-

termined by this Commission after a great deal of study, and after the members of the taxicab industry had been granted full hearings on this complicated problem. The decision of the Commission was predicated upon a detailed study of several thousand manifests which had been kept by taxicab drivers associated with various groups within the industry who had been directed by the Commission to keep careful record of each trip made, the time consumed in each trip, the distance traveled, and the revenue received therefrom. Considerable testimony was presented as to the investment necessary, the expenses of operation and maintenance, the amount of so-called "dead time" and "dead mileage," and the value of the time of the drivers.

No complaint has been received by the Commission as to the adequacy of the single-passenger rates so established. The application filed by the Union proposes that the single-passenger rates be left undisturbed. The group-riding rates were based upon the single-passenger rates and were designed to provide a definite incentive to the drivers to engage in group-riding operation, in order to encourage the rendering of maximum service to the public, and, through the consequent increase in the revenue of the drivers, to compensate them for the additional expense of operation inherent in group riding.

The basis for the application for a change in the group-riding rates stems from the fact that under existing rates it is possible for a driver to receive only 70 cents under group-riding rates for transporting two passengers during the course of a trip from Zone 4 to Zone 1, whereas the single-passenger rate for such a trip is 90 cents. This possibility has been called to the attention of the Commission many times before the filing of this application. It has been offered as an excuse for failure to pick up additional passengers when capacity was available. The usual example cited is the picking up of a passenger at Chevy Chase Circle (Zone 4) going to a point in Zone 1, and after entering Zone 1 picking up a second passenger whose destination is also a point in Zone 1. In all complaints of this character no indication has ever been given of the number of times such a condition would occur in the ordinary course of operation. The drivers complaining of this isolated case overlook the fact that the same rate schedules will permit them to receive $2.50 for the same trip when five persons are transported from Zone 4 to Zone 1. The Commission is convinced, both from observation and from constant complaints by residents of outlying areas of their inability to secure taxicab service, that trips from the fourth zone to the first zone producing revenues in excess of 90 cents far exceed in number the trips producing less than 90 cents.

It is obvious that in any zone system it is not possible to make the charge for each and every trip profitable, just as it is not possible to fix a rate for each and every trip that would limit the return to just the amount that is fair for such trip. The objective of the Commission was to fix rates which, on the average, would be compensatory for the trips between the various zones or subzones. No allegation has been made that the

group-riding rates applicable to any substantial part of the zone system are not compensatory, nor does the application of the Union allege that the present group-riding rates are not compensatory.

[3, 4] Rates prescribed by this Commission must be so definite and certain that every person desiring to avail himself of taxicab service shall be able to tell for himself the correct charges he must pay. Therefore, a rate regulation must be so framed as to reduce the need for interpretation to a minimum and remove, so far as possible, any ground for misunderstanding. The rates proposed in the application filed by the Union do not meet these requirements. To the contrary, the adoption of such rates would lead to endless confusion and argument.

For the foregoing reasons, the Commission finds that the request for hearing on the proposed changes in group-riding rates has not been justified.

[5] The existing hourly rate of $2.50 per hour was first established by Commission Order No. 2349, dated July 17, 1942. Due to emergency conditions induced by the war, the Commission, on May 11, 1943, issued Order No. 2578 (49 PUR (NS) 450) which prohibited the rendition of taxicab service on an hourly basis. This prohibition was removed on October 17, 1945, by Commission Order No. 2962.

At the time Order No. 2349 was issued, evidence before the Commission indicated that the cost of operating a taxicab was approximately 6 cents per mile. The value of the time of the taxicab operator was considered to be 95 cents per hour, which was equivalent to the hourly wage received by motor bus operators in the District of Columbia. Assuming that the taxicab operates over a maximum distance of 25 miles within an hour, the cost of the operation of the taxicab was estimated to be $1.50, leaving a minimum of $1 per hour to compensate the taxicab operator for his time. The proposed increase in the hourly rate would place a minimum value of $1.50 per hour on the taxicab operator's time.

The Union has presented to the Commission no facts on which to justify a belief that the cost of operating a cab has increased beyond 6 cents per mile, nor does the application before this Commission contain any such allegation.

For the foregoing reasons, the Commission finds that the request for a hearing on the proposed increase in the hourly rate from $2.50 to $3 has not been justified.

[6, 7] The waiting time for which a charge of 10 cents for each full 5-minute period is provided in the existing rate schedules, was intended to apply to instances when a taxicab responds to a call and is obliged to wait until the passenger is ready to enter the taxicab, or to instances where a passenger riding alone stops short of his destination and requires the taxicab to wait for him before continuing the trip. In such instances, the taxicab itself is not in operation, but the time of the driver is consumed. It is fair that the taxicab driver be compen-

sated for his time when the passenger takes more time than is reasonable in such instances as those cited above. As previously indicated, rates established have been based on the cost of operation of the taxicab, and the value of the time of the driver was set at 95 cents per hour. Ten cents for a 5-minute period (or $1.20 per hour) provides a liberal allowance on this basis. Twenty cents for a 5-minute period would be equivalent to valuing the time of the driver at $2.40 per hour, which, in the opinion of the Commission, is unreasonable.

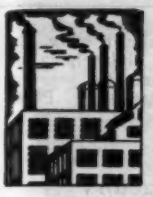
In view of the foregoing, the Commission finds that the request for a hearing on the proposed increase in the charge for waiting time should be denied.

The request for a hearing on the proposed increase from 10 cents to 25 cents in the charge for answering a telephone call for a taxicab service shall be reserved for further consideration.

It appears to the Commission that the changes in certain zone boundaries proposed by the Union might well be the subject of an informal hearing at which all interested parties would be given an opportunity to express their views. At such hearing, consideration can also be given to the application of the Union for the establishment of a fare of $1.10 to the Livingston area as defined on the Union map. Such a hearing can be held without the necessity of incurring the expense incident to a formal public hearing. The Commission will issue appropriate notice of an informal hearing at a time that will be convenient to all interested parties.

Conclusion

The Commission has set forth its position with respect to each of the points contained in the pending application. Based upon the findings herein made, the Commission concludes that it would not be in the public interest to grant a hearing on points 2, 3, and 4 contained in the application.



Industrial Progress

Selected information about products, supplies, and services offered by manufacturers. Also announcements of new literature and changes in personnel.

New Rockwell-Emco Domestic Meter Introduced

THE new Rockwell-Emco #O domestic gas meter, with an outer case of pressure cast aluminum alloy, has been announced by the Pittsburgh Equitable Meter division, Rockwell Manufacturing Company.

Rescaled proportions have been engineered into an approved meter design by the use of new metals and plastics in the working parts, and by precision manufacturing techniques to improve performance and lengthen valve life. Repair is simplified since all parts are readily accessible. Replacements and adjustments can be made by even the inexperienced workman using only common everyday tools. The new meter weighs only 16½ pounds, less than half the weight of the previous design.

Bulletin No. 1100, describing this meter and its features, is available from the Pittsburgh Equitable Meter division, Rockwell Manufacturing Company, 400 North Lexington avenue, Pittsburgh 8, Pennsylvania.

General Detroit Appoints Two New Executives

E. A. WARREN, vice president in charge of sales for The General Detroit Corporation, announces the appointment of two new executives in the sales and advertising departments. Robert Leggat-Weir has been designated assistant sales manager, and Preston W. Wolf has been appointed assistant sales promotion manager.

The General Detroit Corporation manufactures a complete line of Underwriters' approved fire-fighting equipment, including carbon-dioxide, vaporizing liquid, soda acid, foam, and pump type extinguishers. It also manufactures fire trucks and allied products.

Locke Enlarges Plant

THE LOCKE INSULATOR CORPORATION, Baltimore, Maryland, will have in production by May 1, 1946, approximately 30,000 square feet of additional working space in a new extension to the plant. The new plant will house additions to existing departments and will also include a complete pilot plant and laboratory to further a comprehensive program of ceramic research. The additional manufacturing facilities will be devoted to the manufacture of apparatus porcelain.

G-E Builds Mobile Capacitor Unit

A MOBILE, 4150-volt, capacitor unit that is expected to be of considerable value in handling emergency or seasonal overloads was built recently by the General Electric Company at Pittsfield, Massachusetts, for the Consolidated Gas, Electric Light and Power Company of Baltimore.

The new unit, designed to supply local emergency demands for kilovars (reactive kva) and to make possible full-scale field testing of feeder lines to determine correct capacitor needs, consists of six 180-kvar banks of Pyranol (Reg. in U. S. Patent Office) capacitors

(*Continued on page 26*)

(*Continued from page 25*)

mounted on a Fruehauf model 5 semi-trailer chassis.

Three of the banks are arranged for automatic control and three for manual, the former using built-in, magne-blast circuit breakers. A main magne-blast breaker protects the unit itself from short circuits.

The capacitor equipment is connected to the lines by means of cables carried on reels in a rear compartment, which also houses tools required for installation and operation. These cables, equipped with hot line clamps, permit connections to be made to lines without interruption of service.

One of the important uses of the mobile unit will be to sustain voltage at rural or suburban substations while maintenance work is performed on high-tension supply feeders. The substations in such cases are tied together through the 4-kv system.

Brown Instrument Appointments

O. J. Richardson has been appointed industrial manager of the Brown Instrument Company division of Minneapolis-Honeywell Regulator Company at Detroit, Michigan.

Mr. Richardson has been with the Brown Instrument Company for the past ten years, having served as sales engineer and in other capacities at the Philadelphia company's Cincinnati, Buffalo, and Pittsburgh branches.

George W. Brown has been appointed industrial manager of the Cincinnati office. Mr. Brown has been with the Philadelphia industrial division for the past nine years as sales engineer in Chicago, Louisville, Philadelphia, and New York.

James G. Biddle Co. Moves Offices and Factory

James G. Biddle Company, electrical and scientific instruments, announces the consolidation of its offices and factory at a new location for both, 1316 Arch street, Philadelphia 7, Pennsylvania. This move, the first for the company in over thirty years, brings together under one roof the manufacturing, shipping, sales, and other departments.

The company's leading items of manufacture are "Megger" insulation testing instruments and "Frahm" vibrating-reed frequency meters and tachometers. The Biddle company also carries a varied line of instruments for conductor and ground resistance measurements, centrifugal and chronometric tachometers, "Pointolite" lamps, and "Jagabi" laboratory rheostats. It is expected that the present consolidation will be reflected in improved production and a speeding-up of deliveries.

Chevrolet Appoints French As Advertising Manager

Charles J. French, former director of the war products information service of the Chevrolet Motor Division, General Motors Corporation, has been appointed advertising manager of Chevrolet, it was announced recently by T. H. Keating, general sales manager.

Mr. French has been connected with Chevrolet for ten years, and during the war he guided the publicity and public relations program in connection with Chevrolet's war production.

"Weather-man" Offers Automatic Heat Control at Low Cost

Automatic Devices Company, 53 West Jackson boulevard, Chicago 4, has introduced the Weather-man, a completely automatic thermostatic control, actuated by outside temperatures, for controlling the heating of a building. The time at which heating starts in the morning and the time at which it shuts down at night is automatically changed as the weather becomes warmer or colder.

According to the manufacturer, the Weather-man is as simple to install as the usual "day-night" switch, and replaces the inside room thermostat, the day-night switch, and the 65° high limit thermostat. By combining the functions of several instruments in one unit, it is said to simplify the wiring, reduce service and maintenance calls, and, in addition, provide all of the advantages of "outside control" at a cost comparable to the cost of the ordinary controls it replaces.

It may be used to operate any gas or oil

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burner, stoker, circulating pump, fan, motor valve, or zone valve, and may be used with all types of heating systems. It will control the heating of homes, apartments, commercial, and industrial buildings.

Glass-to-metal Hermetic Terminals for Capacitors

A NEW development in glass-to-metal hermetic terminals has been introduced by the Cincinnati Electric Products Company. Known as the #110-RHTL Fusite Terminal, it is a single terminal equipped with a hollow tube and copper connecting lug.

Outstanding features claimed for this new Fusite Terminal are:

1. A high conductive lead can be brought directly through the tube to the copper connecting lug.
2. Provides maximum internal clearance.
3. Outside connections are made with ease and rapidity.
4. Eliminates the necessity of interior connections. Also affords trouble-free operation, insuring perfect insulation and perfect sealing against atmospheric conditions.

The #110-RHTL Fusite Terminal has been especially designed for the capacitor field. However, according to the manufacturer, early indications are that it will be used in many other electrical applications.

Technical Bulletin Issued On Gas Alarm System

A NEW technical bulletin (No. 1116 E), has been issued by Davis Emergency Equipment Company, Inc., 45 Halleck street, Newark 4, New Jersey, on the Davis combustible gas alarm system, a method for detecting and giving audible notification of hazardous gas or vapor conditions sometimes present during industrial processing operations. This bulletin describes the various combinations possible with this system, together with photographs showing the control panel, which is placed in a gas free area, and the explosion-proof analyzer head which detects the presence of combustible gas or vapor at point of origin. Included also is a description of the principle upon which the system operates, the method of operation, and a schematic diagram of a typical installation.

Silex Reëlects Officers

AT the annual stockholders meeting of The Silex Company, Hartford, Connecticut, held recently, the former board of directors was reëlected, according to an announcement by Frank E. Wolcott, president.

Mr. Wolcott also stated that Silex officers were reëlected at the organization meeting which followed the stockholders' meeting, except that Woodson W. Baldwin, formerly comptroller and assistant secretary was elected

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treasurer of the company. The elected officers are: Frank E. Wolcott, president; Wesley R. Becher, vice president and general manager; Edward T. Garvin, secretary; and Woodson W. Baldwin, treasurer.

Rockwell Manufacturing Names Marsteller Advertising Head

WM. A. MARSTELLER has been appointed general advertising manager of Rockwell Manufacturing Company, Pittsburgh, it was announced recently by A. J. Kerr, vice president of sales of the Rockwell organization.

Mr. Marsteller has been vice president in charge of sales, advertising and industrial relations of Edward Valves, Inc., East Chicago, Indiana, a subsidiary of the Rockwell Manufacturing Company.

Subsidiaries and divisions of the Rockwell Manufacturing Company will continue to program and place their own advertising. Mr. Marsteller's work will be of a coördinating and directing nature.

Wheelco Instrument Company Enlarges Staff

WHEELCO INSTRUMENTS COMPANY, Chicago, industrial instrument manufacturers, announce the addition of Francis H. Beaupre and Bruno H. Ramthun to their application engineering department.

These men will serve in a liaison capacity with the sales application, engineering design, research, and production departments on technical matters pertaining to the details and use of Wheelco instruments and associated accessories.

Hotpoint Names Sales Manager Of Cleveland District

J. E. BRICKENDEN has been named district sales manager and E. J. Mack commercial cooking equipment specialist for the Cleveland district, Edison General Electric (Hotpoint) Appliance Company, with offices in the Union Commerce building.

Mr. Brickenden resumes as a sales official after the wartime interruption, to his former duties as a range and water heater specialist at Cleveland. Mr. Mack was with the Cleveland Electric Illuminating Company.

Folder Explains "Pittchlor"

PITTSBURGH PLATE GLASS COMPANY has issued an attractive folder (form A-700) giving detailed information and charts on the use of Pittchlor (70 per cent Calcium Hypochlorite) as a laundry bleach, for water sanitation, for sewage treatment, in the food industry, for petroleum sweetening, for wool shrink-resistance treatment, and for the public health protection.

Copies may be secured from the manufacturer, Columbia Chemical Division, Fifth avenue at Bellefield, Pittsburgh 13, Pennsylvania.

ASHVE Laboratory Moves To New Home

THE American Society of Heating and Ventilating Engineers, 51 Madison avenue, New York 10, New York, has purchased property at 7218 Euclid avenue, Cleveland 3, Ohio, to provide adequate research facilities for serving the entire heating, ventilating, and air conditioning industry, as well as the associated industries, according to the announcement of Alfred J. Offner, president. The move to the new home for the Society's Research Laboratory was effective April 1st. According to Mr. Offner, this represents another forward step in the Society's research program, which is in its 27th year and which is unique among national engineering societies.

Sure-Grip Fluorescent Lampholder

MASTERCRAFT ELECTRIC COMPANY, 187 Murray street, Newark 5, New Jersey, announces production of a new fluorescent lampholder.

The Lasser Sure-Grip lampholder features a new contact design that is claimed to provide perfect, positive contact even under conditions of severe shock and vibration. Made to permit easy wiring into fixtures, it requires a minimum of time for installation.

Sylvania Electric Offers New Fluorescent Lighting Fixtures

PRODUCTION of the company's first postwar fluorescent lighting fixtures, designed by Lurelle Guild especially for use in the home, was announced recently by Robert H. Bishop, general sales manager, lighting products, of Sylvania Electric Products, Inc.

The two new units, currently designated as the Gorham, model R-220, and the Sheffield, model R-420, will be sold primarily for use in kitchens and bathrooms, although either is suitable for lighting other rooms.

Engineering Manager Named

JOHN K. HODNETTE, manager of the Sharon transformer division of the Westinghouse Electric Corporation, has announced the appointment of Franklin L. Snyder as engineering manager of the division.

It also was announced that A. C. Farmer, who for the past five years has served as assistant to H. V. Putman, vice president and manager of the Transformer division, now becomes assistant to Mr. Hodnette.

G-E Appointment

E. J. MCFADDEN, recently returned after more than three years' service in the U. S. Army, has been appointed sales manager for General Electric water heaters, it has been announced by J. R. Poteat, manager of the range & water heater divisions of the General Electric Company.

PROFESSIONAL DIRECTORY

• This Directory is reserved for engineers, accountants, rate experts, consultants, and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, design, and construction. » » »

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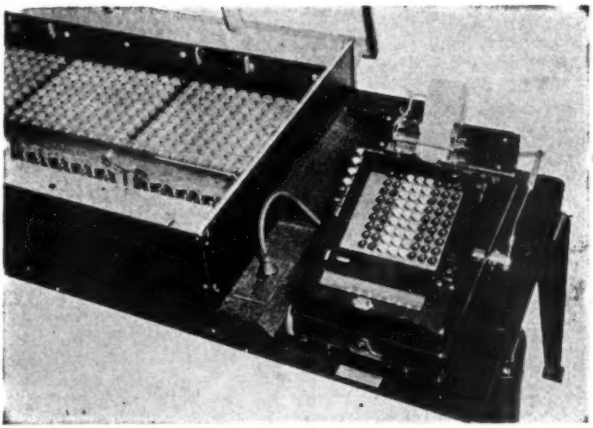

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